

8

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

Civil Action No. C.A. No. 04-1494 (JJF)

MAGTEN ASSET MANAGEMENT CORPORATION and  
LAW DEBENTURE TRUST COMPANY OF NEW YORK,  
Plaintiffs,

V.

NORTHWESTERN CORPORATION,  
Defendant.

Civil Action No. C.A. No. 05-499 (JJF)

MAGTEN ASSET MANAGEMENT CORP.,  
Plaintiff,

MICHAEL S. HANSON and ERNIE S. RINDT,  
Defendants.

DEPOSITION OF  
ERIC JACOBSEN

TAKEN ON: 6/19/2007

BY: DANA ANDERSON

Page 2	Page 4
1 APPEARANCES:	1 INDEX
2 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP	2 Examination by Ms. Steingart, page 8
3 One New York Plaza	3
4 New York, New York 10004-1980	4 INDEX OF EXHIBITS
5 By: Bonnie Steingart, Esq.	5 Exhibit Number 1, Stipulated Protective Order,
6 Sabita Krishnan, Esq.	6 page 7
7 For the Plaintiffs	7 Exhibit Number 2, NorthWestern Corporation Staff
8	8 Meeting/Executive Committee Meeting Minutes, January
9	9 28, 2002, page 14
10 CURTIS, MALLET-PREVOST, COLT & MOSLE LLP	8 Exhibit Number 3, February 25, 2002 E-mail from
11 101 Park Avenue	9 Barbara Forinash to Karen Smook with NOR Staff/Excc
12 New York, New York 10178-0061	10 Committee Materials attachments, page 15
13 By: Joseph Pizzurro, Esq.	11 Exhibit Number 4, Management Financial and
14 Nancy E. Delaney, Esq.	12 Information Report Meeting 2002 Calendar, page 16
15 For NorthWestern Corporation	13 Exhibit Number 5, January 28, 2002 Memorandum from
16	14 Mike Hanson and Eric Jacobsen to The Board of
17	15 Directors regarding Update on Montana Power
18 WILMER, CUTLER, PICKERING, HALE & DORR	16 Acquisition, page 20
19 1875 Pennsylvania Avenue, NW	17 Exhibit Number 6, March 18, 2002 Confidential
20 Washington, DC 20006	18 Memorandum from Eric Jacobsen and Mike Hanson to
21 By: Joseph K. Brenner, Esq.	19 Merle Lewis, Dick Hyland and John Van Camp
22 For the Witness	20 regarding MPC Compensation Proposal, page 27
23	21 Exhibit Number 7, May 28, 2002 Memorandum from Kipp
24	22 Orne to Merle Lewis, Dick Hyland and Eric Jacobsen
25	23 regarding Financing Plans and Considerations,
	24 page 39
	25 Exhibit Number 8, Form 10-Q, NorthWestern Corp,
	26 dated May 15, 2002, page 47
	27 Exhibit Number 9, July 3, 2002 E-mail from Karen
	28 Smook to multiple recipients regarding 05-31-02 For
	29 The Month Ended, page 51
	30 Exhibit Number 10, NorthWestern Management Financial
	31 and Information Report For The Month Ended May 31,
	32 2002, page 52
	33
Page 3	Page 5
1 APPEARANCES (continued):	1 INDEX OF EXHIBITS (continued)
2 BROWNING, KALECZYC, BERRY & HOVEN, PC	2 Exhibit Number 11, NorthWestern Management Financial
3 139 North Last Chance Gulch	3 and Information Report For The Month Ended June 30,
4 Helena, MT 59624	4 2002, page 55
5 By: Stanley Kaleczyc, Esq.	5 Exhibit Number 12, Form 10-Q, NorthWestern Corp,
6 Kimberly A. Beatty, Esq.	6 dated August 14, 2002, page 57
7 For Michael J. Hanson and Ernie J. Kindt	7 Exhibit Number 13, July 9, 2002 Confidential
8	8 Memorandum from Eric Jacobsen and Mike Hanson to
9	9 Merle Lewis, Dick Hyland and John Van Camp
10 NIXON PEABODY, LLP	10 regarding NorthWestern Energy LTIP, page 65
11 437 Madison Avenue	11 Exhibit Number 14, July 30, 2002 Memorandum from
12 New York, NY 10022-7039	12 Mike Hanson to The Board of Directors regarding
13 By: Christopher M. Desiderio, Esq.	13 Update on NorthWestern Energy Integration, page 69
14 For Law Debenture Trust Company of New York	14 Exhibit Number 15, July 31, 2002 Memorandum from
15	15 Eric Jacobsen to NorthWestern Board of Directors
16	16 regarding Going Flat Resolution, page 77
17	17 Exhibit Number 16, NorthWestern Management Financial
18	18 and Information Report For The Month Ended July 31,
19	19 2002, page 83
20	20 Exhibit Number 17, August 16, 2002 Letter from
21	21 William Schwitzer to Stephen Hearn and Fred Frank,
22	22 page 89
23	23 Exhibit Number 18, September 6, 2002 Letter from
24	24 William Schwitzer to Stephen Hearn and Fred Frank,
25	25 page 94
	26 Exhibit Number 19, November 8, 2002 Memorandum from
	27 Eric Jacobsen, Kipp Orne to The Members of the
	28 Disclosure Committee and each Disclosure
	29 Sub-Committee, page 120
	30 Exhibit Number 20, November 12, 2002 E-mail from Tim
	31 Atkinson to Kurt Whitesel, Kipp Orne and Eric
	32 Jacobsen with attached Memorandum, page 120
	33 Exhibit Number 21, October 30, 2002 Memorandum from
	34 Kipp Orne to NorthWestern Board of Directors
	35 regarding Revised Proposed 2003 Operating Plan,
	36 page 130
	37

<p style="text-align: center;">Page 78</p> <p>1 A. I don't have specific recollections of that, 2 no. 3 Q. In any case, the board at the meeting in August 4 voted on resolutions concerning the going-flat 5 transaction, correct? 6 A. I believe that's correct. 7 Q. Did you draft the resolutions? 8 A. I believe they were prepared by outside 9 counsel. 10 Q. Did you review them before they were presented 11 to the boards? 12 A. I would assume that I did. I don't have a 13 specific recollection. 14 Q. Have you had a chance to look at that part of 15 the minutes, and it begins on page 00145? 16 A. There's two different numbers, okay. 17 Q. Do I have the wrong number? 18 A. We were using NOR numbers, now -- 19 Q. I'm sorry. NOR 9570. 20 A. Okay. Here. (Reviews document.) 21 Q. Do you see the first whereas, it says "Whereas 22 NorthWestern Corporation believes it advisable 23 for rating agency purposes to move the assets." 24 Do you see that? 25 A. Yes, I do.</p>	<p style="text-align: center;">Page 80</p> <p>1 acquire assets. It's my recollection that we 2 then had to seek approval to be in that holding 3 company structure. And as I testified earlier, 4 it was our belief that that structure was not 5 compatible with NorthWestern's business plan. 6 And so we had requested authority to go ahead 7 and close on that basis but then transition to 8 a flat structure so that we would not be forced 9 to become a registered holding company. 10 Q. Now, was there any requirement that this occur 11 at or around November of 2002? 12 A. It's my recollection that we had a year or so. 13 But I don't have a specific recollection. 14 Q. Now, at the time that you received permission 15 to do this from the Montana Public Service 16 Commission, was the Montana Public Service 17 Commission provided with updated financial 18 reporting concerning the advances to Expanets? 19 A. It's my recollection that the approval from the 20 Montana Public Service Commission was given as 21 part of the original approval of the 22 transaction which was in, I believe, January of 23 2002. 24 Q. And after that initial approval was sought and 25 obtained, was updated financial information</p>
<p style="text-align: center;">Page 79</p> <p>1 Q. Why was it advisable for rating agency purposes 2 to move the assets? 3 A. I don't recall. 4 Q. Was there any discussion of that with the 5 board? 6 A. I don't recall. 7 Q. As you sit here today and review the resolution 8 that was presented to the board, is it your 9 understanding that this is the rationale that 10 the board used in approving the going-flat 11 transaction? 12 A. No. My recollection is that in the very late 13 stages of the acquisition process, Montana 14 Power or Touch America made a change in the 15 structure of their own entity and dropped all 16 of their utility assets into an LLC, a limited 17 liability company. It changed our acquisition 18 from that of assets to the interest in this 19 LLC, so the transaction changed in the last 20 days, month or so, I can't recall the exact 21 timing of that. 22 That resulted in us, after 23 consummating the acquisition, being in a 24 holding company structure which was not the 25 original plan. The original plan was to</p>	<p style="text-align: center;">Page 81</p> <p>1 concerning the liquidity of NorthWestern 2 provided to Montana Public Service Commission? 3 A. I don't recall. 4 Q. There were a series of board meetings in 5 September of 2002, correct? 6 A. I believe so. 7 Q. And those series of board meetings concerned 8 the difficulties that NorthWestern was having 9 in raising additional capital, correct? 10 A. I would have to look at the agendas to see all 11 the items that were discussed. Financing would 12 typically be something that the board discussed 13 at every meeting. 14 Q. In September of 2002, did anyone update the 15 Montana Public Service Commission about the 16 issues that NorthWestern was facing concerning 17 liquidity? 18 A. I don't recall. 19 Q. Did anyone update the Montana Public Service 20 Commission about the risks that would be posed 21 to the utility company assets if they were 22 owned directly by NorthWestern? 23 MR. PIZZURRO: Objection. 24 THE WITNESS: I don't recall. 25 BY MS. STEINGART:</p>

<p style="text-align: center;">Page 82</p> <p>1 Q. Now, when you presented this resolution to the 2 board of directors concerning the going-flat 3 transaction, was there any financial analysis 4 presented with respect to the assets and 5 liabilities being transferred in connection 6 with the going-flat transaction?</p> <p>7 A. I don't recall.</p> <p>8 Q. Was the board of directors informed about the 9 value of the assets and the value of the 10 liabilities being transferred in connection 11 with the going-flat transaction?</p> <p>12 A. I don't recall.</p> <p>13 Q. Was there any discussion about whether 14 NorthWestern could pay the liabilities being 15 assumed from the Montana Power Company in 16 connection with the going-flat transaction?</p> <p>17 A. I don't remember any such discussions.</p> <p>18 Q. So at the time the board approved the 19 going-flat transaction, the board talked about 20 the advisability for rating agency purposes of 21 transferring the assets but did not discuss 22 NorthWestern's ability to make payment on 23 Montana Power Company liabilities, correct?</p> <p>24 MR. BRENNER: Object to the form. 25 MR. PIZZURRO: Objection.</p>	<p style="text-align: center;">Page 84</p> <p>1 increasing?</p> <p>2 A. I don't recall.</p> <p>3 Q. And was it also your understanding that these 4 predictions of Expanets' ability to repay were 5 also becoming gloomier?</p> <p>6 A. I see that the forecast as indicated here is 7 changing. It is still prospective.</p> <p>8 Q. Now, at some point in 2002 you learned that 9 Expanets would not repay any of the monies that 10 were advanced to it during 2002, correct?</p> <p>11 A. I believe late in the year that became more 12 clear, yes.</p> <p>13 Q. Did anyone, after receiving the MFIR for July, 14 either during the operational meetings or any 15 other meetings, discuss the connection between 16 Expanets' continued cash flow problems, its 17 borrowings and the Expert system?</p> <p>18 A. I don't recall.</p> <p>19 Q. Did anyone discuss at any of these operational 20 meetings that you attended the increasing 21 liquidity pressures that Expanets was creating 22 for NorthWestern?</p> <p>23 A. I did not attend the -- what I understand to be 24 the operating meetings which were the 25 subsidiary specific meetings. The meetings to</p>
<p style="text-align: center;">Page 83</p> <p>1 THE WITNESS: I don't recall. 2 (Deposition Exhibit Number 16 marked 3 for identification.)</p> <p>4 BY MS. STEINGART:</p> <p>5 Q. Sir, do you recognize this to be the 6 NorthWestern MFIR for July 2002?</p> <p>7 A. (Reviews document.) It appears to be that, 8 yes.</p> <p>9 Q. And you received this in the course of your 10 employment at NorthWestern?</p> <p>11 A. I would assume that I did.</p> <p>12 Q. I'd like to direct your attention to page 9 13 of 14 or NOR 362075.</p> <p>14 A. (Reviews document.)</p> <p>15 Q. And I'll ask you to look at the paragraph at 16 the bottom of the page that begins with "Cash 17 collections..."</p> <p>18 A. All right.</p> <p>19 Q. And was it your understanding at the end of 20 July 2002 that 100 percent of the customers 21 would not receive accurate bills until October?</p> <p>22 A. I see that's what's indicated here in the 23 report.</p> <p>24 Q. Was it your understanding that the incremental 25 borrowings had or were -- had and were</p>	<p style="text-align: center;">Page 85</p> <p>1 discuss these MFIRs, I did participate in. And 2 I believe that it's my recollection that 3 somewhere in this report is a liquidity report 4 that's on NOR 362079, I believe. 5 And so that information, I believe, 6 was a standard portion of these reports.</p> <p>7 Q. Now, is the number there that's listed for 8 Montana First Megawatts a cash availability or 9 a cash need?</p> <p>10 A. I don't know where you are on this report.</p> <p>11 Q. I'm looking at the page that you referenced and 12 the line concerning Montana First Megawatts. 13 MR. BRENNER: Under the heading 14 Potential Cash -- 15 THE WITNESS: Oh, I see it now. I see 16 it now.</p> <p>17 BY MS. STEINGART:</p> <p>18 Q. Yes. So was the company going to have some 19 payment obligation with respect to MFM?</p> <p>20 A. It appears to be unclear at this point if I 21 read the footnote.</p> <p>22 Q. Now, during 2002 NorthWestern was not able to 23 sell MFM, was it?</p> <p>24 A. I don't recall when the actual assets were 25 sold.</p>

<p style="text-align: center;">Page 86</p> <p>1 Q. There is future cash needs that are noted for 2 Expanets. 3 Do you see that? 4 A. Yes. 5 Q. Expanets working capital, I think it's 6 25 million? 7 A. Yes. 8 Q. Did NorthWestern advance an additional 9 25 million to Expanets? 10 A. I don't recall the -- I do recall that the 11 AVAYA credit agreement was restructured, and it 12 ultimately -- resolution of the relationship 13 with AVAYA was negotiated. I do not recall 14 whether this specific advance was made or not. 15 Q. Now, it says "Funds availability." 16 Do you see that? 17 A. Yes. 18 Q. And facilities? 19 A. Yes. 20 Q. And it says "Expanets." And is that 80 21 million? 22 A. It appears to be, yes. 23 Q. And did NorthWestern ever receive that 24 \$80 million? 25 A. I don't know.</p>	<p style="text-align: center;">Page 88</p> <p>1 to pay part of that down, correct? 2 A. It was extended and renegotiated. 3 Q. And how much did that cost? How much did it 4 cost to extend it and renegotiate it? 5 A. In terms of expenses of lawyers to do it? 6 Q. Or to redo the facility, in fees and expenses. 7 A. I don't recall any fee being charged by them to 8 do it at all. 9 Q. And was that part of an overall negotiation 10 with AVAYA? 11 A. There were ongoing negotiations with them over 12 various matters, yes. 13 Q. And was any other new lender other than AVAYA 14 willing to provide any money to Expanets? 15 A. Not that I recall. 16 Q. Was AVAYA willing to provide enough so that 17 Expanets could repay NorthWestern \$80 million? 18 A. I don't recall. I don't believe so. 19 Q. And AVAYA wasn't even asked to do that, were 20 they? 21 A. Not that I'm aware. 22 Q. They were just asked to roll over the amount 23 that was outstanding at that time, is that 24 correct? 25 A. I believe that's correct.</p>
<p style="text-align: center;">Page 87</p> <p>1 Q. And then do you know what that number is based 2 on? 3 A. No, I don't. 4 Q. Now, the chart that we were looking at before 5 on page 9 talks about there being \$160 million 6 in borrowings by Expanets from NorthWestern. 7 Do you see that? 8 A. (Reviews document.) That appears to be a 9 forecasted number. 10 Q. Did that number get even higher than that? 11 A. I don't know. 12 Q. Did anyone discuss in connection with this MFIR 13 and the liquidity section that you've 14 referenced us to, did anyone ask where Expanets 15 was getting the 80 million? 16 A. I don't recall. 17 Q. Do you know of any lender at the end of 18 July 2002 or August 2002 who was willing to 19 lend Expanets any money whatsoever? 20 A. AVAYA. 21 Q. Did AVAYA lend the money? 22 A. AVAYA had an existing credit agreement which 23 stayed outstanding. 24 Q. Other than the AVAYA existing agreement -- and 25 this liquidity analysis shows there is a need</p>	<p style="text-align: center;">Page 89</p> <p>1 Q. Are you aware of whether additional new money 2 was sought for Expanets during August and 3 September? 4 A. I generally recall that Expanets was looking to 5 obtain financing to replace the AVAYA facility 6 which had a maturity date. 7 Q. Were they looking to obtain any financing to 8 repay NorthWestern? 9 A. I don't remember. 10 (Deposition Exhibit Number 17 marked 11 for identification.) 12 BY MS. STEINGART: 13 Q. We'll do this document then we'll break for 14 lunch. 15 MS. STEINGART: You have a call, don't 16 you? 17 MR. BRENNER: I'm flexible so we can 18 break whenever you want to. 19 BY MS. STEINGART: 20 Q. Have you seen Jacobsen 17 before? 21 A. (Reviews document.) I believe I have. 22 Q. And what do you understand this to be? 23 A. It appears to be NorthWestern's response to SEC 24 comments in connection with the S-4 25 registration statement that was filed.</p>

<p style="text-align: center;">Page 142</p> <p>1 Q. And D is the sale leaseback of assets, what's 2 that? 3 A. I'm not sure. 4 Q. Did the board specify whether one or two or all 5 of these items were necessary. 6 A. I don't recall that. 7 Q. Were management directed to pursue all of them? 8 A. It appears that the instruction was to continue 9 to explore them. 10 Q. Now, let's look at cost savings. Were steps 11 taken to sell the plane? 12 A. I don't recall. 13 Q. Was there more than one plane? 14 A. I believe there were two. 15 Q. So one was being kept and one was being sold? 16 A. I don't know. One was a jet and one was a prop 17 plane. 18 Q. Were steps taken to reduce corporate events and 19 contributions? 20 A. I don't know. 21 Q. Were steps taken to reduce corporate personnel? 22 A. I don't recall. 23 Q. Were senior management compensation plans 24 reduced? 25 A. I don't recall.</p>	<p style="text-align: center;">Page 144</p> <p>1 developed with respect to Expanets? 2 A. I don't have a specific recollection. I 3 believe it was a pretty open-ended assignment 4 to consider all available opportunities from 5 sale to partnership to continued investment. 6 Q. Are you aware -- strike that. 7 During the years that you were at 8 NorthWestern, had any directives such as this 9 (indicating) been imposed by the board on 10 management? 11 A. Not in writing. Many times instructions were 12 given, but not in writing in this type of 13 presentation. 14 Q. Why do you think this was done in writing in 15 this kind of presentation? 16 A. I don't know. 17 Q. Do you think Mr. Drook and the board had 18 concerns about the stability of NorthWestern? 19 A. I don't know. 20 Q. Do you think Mr. Drook and the board had 21 concerns about the options of NorthWestern 22 going forward? 23 A. I don't know. 24 Q. In this period immediately before the closing 25 of the going-flat transaction, were these</p>
<p style="text-align: center;">Page 143</p> <p>1 Q. And do you recall what other items were 2 identified in the board materials on the 5th 3 and the 6th? 4 A. No, I do not. 5 Q. Did you consider nothing as sacred? 6 A. Is that a trick question? 7 Q. Well -- 8 A. I see that Mr. Drook has used that term, "I 9 hold many things sacred." 10 Q. That's right. So did you or other members of 11 management add items, cost-saving items to the 12 list pursuing the directive that, quote, 13 Nothing is sacred, close quote? 14 A. I don't recall. 15 Q. Is it fair to say that Mr. Drook had a sense of 16 urgency about these measures? 17 A. That would seem to be indicated by the 18 document. 19 Q. Number 8 talks about Expanets. And 20 prepare -- says "Prepare an evaluation of 21 strategic alternatives involving Expanets no 22 later than the next board meeting." 23 Do you see that? 24 A. Yes, I do. 25 Q. Do you recall what strategic alternatives were</p>	<p style="text-align: center;">Page 145</p> <p>1 liquidity concerns and the urgency to raise 2 capital disclosed to the Montana Public Service 3 Commission? 4 A. I don't know. 5 Q. Did the Montana Public Service Commission know 6 that the assets of the Montana utility would be 7 used to raise capital to benefit the 8 non-utility assets? 9 MR. KALECZYC: Objection. 10 THE WITNESS: I don't know. They knew 11 that the acquisition debt was maturing 12 because they had seen that debt when it was 13 originally put in place and were familiar 14 with the maturity dates. I don't know -- I 15 don't know if they knew at this particular 16 time. 17 BY MS. STEINGART: 18 Q. And part of the cash flow needs of NorthWestern 19 at this particular time was not only because of 20 the acquisition debt but was because of the 21 hundreds of millions of dollars being spent on 22 the non-utility assets, correct? 23 A. I'm not sure of that statement. The primary 24 focus was the maturity of the debt. At this 25 time of year you are moving into the most</p>

<p style="text-align: center;">Page 146</p> <p>1 sizable season for an energy company. And 2 actually cash flows are higher during this and 3 the next several months than they are at any 4 other time during the year. So a significant 5 amount of cash was being generated from a cash 6 flow standpoint.</p> <p>7 So I believe the real target was the 8 fact that there was maturing debt obligations.</p> <p>9 Q. There was a cash flow issue because there was 10 \$190 million advanced to Expanets, correct?</p> <p>11 MR. PIZZURRO: Objection.</p> <p>12 THE WITNESS: That cash had already 13 been advanced prior to moving into this 14 seasonal area which would be the highest 15 cash flow period of the company.</p> <p>16 BY MS. STEINGART:</p> <p>17 Q. During the highest cash flow period of the 18 company, Mr. Drook told you that nothing was 19 sacred, didn't he?</p> <p>20 A. He has indicated that in this letter.</p> <p>21 Q. So he had concerns about liquidity in addition 22 to cash flow, didn't he?</p> <p>23 MR. PIZZURRO: Objection.</p> <p>24 THE WITNESS: I'm not sure that 25 follows directly from this so much as it's</p>	<p style="text-align: center;">Page 148</p> <p>1 modeling of the NorthWestern enterprise that 2 the creditors would look at.</p> <p>3 Q. But the lender who was providing this financing 4 was going to be senior to the indebtedness that 5 was being transferred with the assets from 6 Montana Power, correct?</p> <p>7 A. I believe that's correct.</p> <p>8 Q. And the assets of Montana Power were going to 9 be used to secure that indebtedness, correct?</p> <p>10 A. Together with other assets.</p> <p>11 Q. Together with other assets. 12 So by the time that this lender was 13 paid, there wouldn't be much for other 14 indebtedness, would there be?</p> <p>15 MR. PIZZURRO: Objection.</p> <p>16 THE WITNESS: You can't tell that, 17 there could be plenty.</p> <p>18 BY MS. STEINGART:</p> <p>19 Q. But there wasn't, was there?</p> <p>20 A. I believe that's not true. I don't know. I 21 think that most of these — I don't know what 22 the ultimate payout or return was for 23 creditors, and I believe your client, the issue 24 is still open.</p> <p>25 Q. Right. And so as far as you know the QUIPS</p>
<p style="text-align: center;">Page 147</p> <p>1 an instruction to be very clinical and 2 objective in the assignment.</p> <p>3 BY MS. STEINGART:</p> <p>4 Q. What impact did the advance of \$190 million to 5 Expanets have on NorthWestern's financial 6 situation on November 15, 2002?</p> <p>7 A. That money had already been advanced and so the 8 most telling impact was the interest cost that 9 NorthWestern had to the extent that any funds 10 advanced came from credit arrangements. I 11 believe some of it came from cash flow and that 12 wouldn't have an interest component.</p> <p>13 Q. And on November 15, 2002 what was the prospect 14 that Expanets was going to repay the 15 \$190 million?</p> <p>16 A. I don't know.</p> <p>17 Q. As NorthWestern was adding indebtedness at the 18 level of NorthWestern, what assessment was done 19 of the cash flow available to pay for not only 20 the new indebtedness but the liabilities being 21 assumed from the going-flat?</p> <p>22 A. Well, in every financing, the overall 23 obligations of NorthWestern were considered by 24 the lenders, sometimes there would be covenants 25 addressing those. So it was part of the</p>	<p style="text-align: center;">Page 149</p> <p>1 weren't repaid, were they?</p> <p>2 A. I don't know.</p> <p>3 Q. And if not for the going-flat, those assets 4 would have stayed at Montana Power Company, 5 correct?</p> <p>6 MR. KALECZYC: Objection.</p> <p>7 THE WITNESS: There is no guarantee in 8 how those assets would have been treated 9 because had NorthWestern not done it at the 10 going-flat transaction, it might have put 11 additional debt at that subsidiary level 12 and issued secured bonds on the Montana 13 assets. And then did separate secured 14 bonds on Nebraska and South Dakota, didn't 15 have to do it all at one level, you could 16 do it at each of the individual levels, 17 more complex, more work, same result.</p> <p>18 BY MS. STEINGART:</p> <p>19 Q. But that's not what happened?</p> <p>20 A. No, that's not what happened.</p> <p>21 Q. Now, was there any discussion of getting a 22 fairness opinion with respect to the going-flat 23 transaction?</p> <p>24 A. Not that I recall.</p> <p>25 Q. Was there any assessment done of the assets</p>

<p style="text-align: center;">Page 150</p> <p>1 received and the liabilities assumed?</p> <p>2 A. Not that I recall.</p> <p>3 Q. Was there a valuation performed in order to</p> <p>4 obtain financing by NorthWestern? Was a</p> <p>5 valuation done of the assets of the Montana</p> <p>6 Power Company that NorthWestern used to obtain</p> <p>7 financing?</p> <p>8 A. If the question is in connection with the</p> <p>9 financing that was done in February of 2003,</p> <p>10 there was a review by the creditors of the</p> <p>11 assets, the answer to that would be yes.</p> <p>12 (Deposition Exhibit Number 23 marked</p> <p>13 for identification.)</p> <p>14 BY MS. STEINGART:</p> <p>15 Q. After the 11/15 directive, there was additional</p> <p>16 information that Expanets was not going to meet</p> <p>17 its lowered earnings expectations, correct?</p> <p>18 A. Yes.</p> <p>19 Q. So the news that was given to the board in the</p> <p>20 October 30th memo we just looked at was updated</p> <p>21 on November 21st, correct?</p> <p>22 A. Sometime in late November, yes.</p> <p>23 Q. So we had the October 30th earnings memo. We</p> <p>24 had the -- then you had meetings with respect</p> <p>25 to the third quarter 10-Q, correct?</p>	<p style="text-align: center;">Page 152</p> <p>1 Q. Did it close immediately before this?</p> <p>2 A. I don't know.</p> <p>3 Q. Did anyone ask why this information was</p> <p>4 provided at a point in time that it could not</p> <p>5 be taken into account in connection with the</p> <p>6 going-flat transaction?</p> <p>7 A. I think it was provided by Expanets. They</p> <p>8 seemed to have made some determination after</p> <p>9 continuing to review their numbers and it was a</p> <p>10 complete surprise.</p> <p>11 Q. It was a complete surprise to Expanets?</p> <p>12 A. To NorthWestern -- to me.</p> <p>13 Q. What explanation did you receive from those you</p> <p>14 asked at Expanets about why this came on</p> <p>15 November 21st?</p> <p>16 A. Again, we instituted -- I instituted a process</p> <p>17 to advise the audit committee and the audit</p> <p>18 committee had, I believe, Rick Fresia and</p> <p>19 John Charters participate in preparation of</p> <p>20 materials and answer questions to try to</p> <p>21 explain what was happening. And I believe some</p> <p>22 of their explanation is embodied in this</p> <p>23 (indicating) e-mail, but I believe there was</p> <p>24 additional information prepared for the audit</p> <p>25 committee.</p>
<p style="text-align: center;">Page 151</p> <p>1 A. Yes.</p> <p>2 Q. And also during that period of time you had the</p> <p>3 directive from the board that money needed to</p> <p>4 be raised and nothing was sacred, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Then you received the 11/21 memo from Kipp</p> <p>7 Orme, right?</p> <p>8 A. (Reviews document.) Yes.</p> <p>9 Q. At this point did you or anyone else ask</p> <p>10 Kipp Orme about why these facts should be</p> <p>11 communicated days after the third quarter 10-Q</p> <p>12 was filed?</p> <p>13 A. Yes.</p> <p>14 Q. Who did you ask about that?</p> <p>15 A. I asked Kipp about starting a process to</p> <p>16 immediately advise our audit committee to</p> <p>17 examine and had the audit committee begin to</p> <p>18 look into the issues and ask questions as well</p> <p>19 as it seemed incredibly surprising that we</p> <p>20 could have an information delta or difference</p> <p>21 of this sort so soon after we had filed a 10-Q.</p> <p>22 Q. And how long did you receive this information</p> <p>23 after the going-flat transaction?</p> <p>24 A. I don't know when the going-flat transaction</p> <p>25 closed.</p>	<p style="text-align: center;">Page 153</p> <p>1 Q. Did anyone suggest in words or substance that</p> <p>2 the process was being manipulated?</p> <p>3 A. I don't recall that.</p> <p>4 Q. Did the board or others at NorthWestern</p> <p>5 determine that they had been misled?</p> <p>6 A. At the time I did not have that understanding.</p> <p>7 Q. Given the amount and the consistency of the bad</p> <p>8 news that came from Expanets during 2002, could</p> <p>9 people say on a basic level that they were</p> <p>10 really surprised about this?</p> <p>11 MR. PIZZURRO: Objection.</p> <p>12 BY MS. STEINGART:</p> <p>13 Q. Well -- I mean, could --</p> <p>14 A. I believe that, at least myself, I believe that</p> <p>15 I was very surprised at this answer and was</p> <p>16 beginning to have questions about the</p> <p>17 competence of the people at Expanets. I can't</p> <p>18 testify as to Kipp Orme, Dick Hylland's, other</p> <p>19 people's view on whether they were surprised or</p> <p>20 not.</p> <p>21 Q. Do people think that it was just a coincidence</p> <p>22 that the bad news from Expanets emerged after</p> <p>23 the close of the equity offering, the</p> <p>24 \$720 million bond registration and the</p> <p>25 going-flat transaction?</p>

<p style="text-align: center;">Page 154</p> <p>1 MR. PIZZURRO: Objection.    2 THE WITNESS: That's a broad question    3 with several aspects to it. The bond    4 registration, that money was already out    5 and it was just merely an exchange. So    6 that financing had been already done and it    7 was merely an exchange of one instrument    8 for another. So that wasn't new money that    9 came as a result of that transaction. This    10 happened well after the equity offering, a    11 couple of months, I guess, and there was    12 never any discussion of manipulation, it    13 was a complete surprise on my part.</p> <p>14 BY MS. STEINGART:</p> <p>15 Q. It wasn't a couple of months after the equity    16 offering, it was right on the heels of the    17 equity offering, wasn't it?</p> <p>18 A. This was late November and the equity offering    19 was the first couple days of October, so that's    20 closer to two months rather than right on the    21 heels.</p> <p>22 Q. In connection with the equity offering, didn't    23 NorthWestern make the representation in the    24 underwriting agreement that the rating would    25 not be lowered during -- prior to the offering,</p>	<p style="text-align: center;">Page 156</p> <p>1 Expects in relation to these other capital    2 events that I've just listed?</p> <p>3 A. It's my recollection that the board -- as I was    4 very surprised by this, and I believe at some    5 point there was a discussion of was there    6 potential liability with respect to the equity    7 offering.</p> <p>8 Q. But no one considered what the potential    9 exposure would be with respect to going flat,    10 correct?</p> <p>11 A. I don't recall.</p> <p>12 Q. How did the 11/21 memo impact the activities    13 that you were undertaking in connection with    14 the 11/15 board directive, if at all?</p> <p>15 A. I'm not sure -- I mean, we continued to -- I    16 believe that the management team continued to    17 work on those instructions. The receipt of    18 this information initiated another and separate    19 process by the audit committee to try to    20 understand what was behind this new    21 information.</p> <p>22 (Deposition Exhibit Number 24 marked    23 for identification.)</p> <p>24 BY MS. STEINGART:</p> <p>25 Q. I'd like to show you what we've marked as</p>
<p style="text-align: center;">Page 155</p> <p>1 correct?    2 A. (No response.)</p> <p>3 Q. We looked at that together, do you recall?</p> <p>4 A. That is not what it said. It said that the    5 rating -- maintenance of the rating was a    6 condition of the financing. NorthWestern did    7 not make a representation that the rating    8 wouldn't be changed. Those are different    9 things.</p> <p>10 Q. So if the rating changed prior to the equity    11 offering then the underwriter could have walked    12 away, correct?</p> <p>13 A. They would have that election, they may or may    14 not have walked away.</p> <p>15 Q. So to the extent NorthWestern wanted to close    16 on the equity offering, it was important for    17 the rating not to change, correct?</p> <p>18 A. That's one factor, yes.</p> <p>19 Q. Do you think Mr. Hylland knew that?</p> <p>20 A. Knew what?</p> <p>21 Q. That it was important for the rating not to    22 change in order to close the equity offering?</p> <p>23 A. I don't know.</p> <p>24 Q. Did the board, to your knowledge, discuss the    25 substance of the timing of the disclosures by</p>	<p style="text-align: center;">Page 157</p> <p>1 Jacobsen 24.</p> <p>2 A. (Reviews document.) All right.</p> <p>3 Q. Did you see this memo written by Mr. Lewis and    4 Mr. Hylland to the board of directors on or    5 around December 7, 2002?</p> <p>6 A. I don't have a specific recollection. I    7 believe that I saw it at that time.</p> <p>8 Q. And you were participating in trying to obtain    9 financing during that time, weren't you?</p> <p>10 A. I participated in meetings, yes.</p> <p>11 Q. Who was taking the lead on getting the facility    12 from Credit Suisse First Boston?</p> <p>13 A. Economics of those kinds of transactions would    14 generally be discussions amongst Dick Hylland    15 and Kipp Orme from the finance side. And then    16 I would have the lead in executing the    17 transaction from the legal documentation side    18 and all of the many steps that would be    19 required, in particular, for a secured    20 facility.</p> <p>21 Q. Do you know what Mr. Hylland and Mr. Lewis    22 meant when they say here that "Two additional    23 factors over this timeframe have now also come    24 to light that greatly impact the urgency of    25 executing an FMB or other secured transaction"?</p>

<p style="text-align: right;">Page 158</p> <p>1           Do you see that?</p> <p>2   A. Yes, I do.</p> <p>3   Q. How do these factors impact the urgency?</p> <p>4   A. Well, I believe we had looked previously at the 5    new information from Expanets and so the board 6    was concerned about what the real situation was 7    at Expanets and was surprised by that 8    revelation of that information. And around 9    this time we're still in the process of 10   investigating that, so it was an unknown.</p> <p>11        In number 2, it seems to refer to a 12    covenant, but I can't recall the specifics.</p> <p>13   Q. So to the extent that the existing debt would 14    have had covenant defaults, getting new debt 15    which didn't have those defaults would be 16    important, correct?</p> <p>17   A. I believe the existing debt had the ability to 18    be rolled over if you were in compliance with 19    certain covenants. And so if you did not 20    comply -- were not in compliance with a 21    particular covenant, you would not have the 22    election to roll, you would need the consent of 23    the lender or have to get alternate financing.</p> <p>24   Q. And typically needing to restate your 25    financials would be a covenant default,</p>	<p style="text-align: right;">Page 160</p> <p>1   Q. Now, if there were covenant defaults, would it 2    cause an acceleration of the debt?</p> <p>3   A. It could. Typically lenders work with a 4    company, they don't want to default either.</p> <p>5   Q. Now, at that point, there's knowledge, was 6    there not, that there were serious finance 7    accounting issues at Expanets?</p> <p>8   A. I believe as I testified that process was 9    undergoing at this point. The audit committee 10    was beginning to look into that and asking 11    questions and demanding answers from the 12    Expanets management team.</p> <p>13   Q. And there was the expectation at that point 14    that financials would have to be restated, 15    wasn't there?</p> <p>16   A. I don't believe that that decision had been 17    made yet.</p> <p>18   Q. Under consideration at that point though, 19    wasn't it?</p> <p>20   A. I don't recall.</p> <p>21   Q. Were there disclosure recommendations that were 22    talked about in connection with this memo that 23    you recall?</p> <p>24   A. I don't have a recollection in connection with 25    this memorandum. I do recall that my advice to</p>
<p style="text-align: right;">Page 159</p> <p>1   wouldn't it?</p> <p>2   A. I don't know.</p> <p>3   Q. In your experience, isn't there a covenant 4    usually that the financials that you publicly 5    file are not misleading or --</p> <p>6   A. Yes.</p> <p>7   Q. -- accurate?</p> <p>8       Do you recall -- there is a reference 9    further down on the page to -- highlighting 10    to -- an agenda that highlighted NorthWestern's 11    liquidity requirements. "These alternatives 12    will be reviewed with the board."</p> <p>13       Do you see that?</p> <p>14   A. Yes, I do.</p> <p>15   Q. In connection with the agenda -- the attached 16    agenda also highlighting NorthWestern's 17    liquidity requirements, what were the liquidity 18    requirements at that time, if you recall?</p> <p>19   A. I don't recall. It might just primarily be 20    talking about the maturity date.</p> <p>21   Q. Well, whether the maturity would, what, be 22    accelerated by covenant default?</p> <p>23   A. No, I believe the discussions were about 24    rolling that over or refinancing that at its 25    scheduled maturity date.</p>	<p style="text-align: right;">Page 161</p> <p>1   the audit committee was that once we had this 2    information from Expanets, the audit committee 3    should undertake a process to ask questions, 4    determine for itself what the situation was. 5    And then based on that information, make any 6    corrective disclosures required. And I believe 7    a new press release was issued sometime within 8    a couple of days of this date, is my 9    recollection.</p> <p>10   Q. Did you participate in obtaining a valuation 11    report for Credit Suisse First Boston to assist 12    in the financing referred to in the 13    December 7th memo?</p> <p>14   A. I'm not sure what you mean by "valuation 15    report."</p> <p>16       MR. BRENNER: Did you say evaluation 17    or valuation?</p> <p>18       MS. STEINGART: A valuation of... 19       (Deposition Exhibit Number 25 marked 20       for identification.)</p> <p>21       BY MS. STEINGART:</p> <p>22       Q. Okay. We brought this, 25, it's a cover memo 23       with a valuation report -- an appraisal.</p> <p>24       Not evaluation. An appraisal. 25       Did you participate in arranging for</p>

<p style="text-align: right;">Page 162</p> <p>1 an appraisal for CSFB in connection with the 2 financing that was being discussed with CSFB in 3 December?</p> <p>4 A. (Reviews document.) No. Kipp Orne would have 5 been the interface with this bearing point firm 6 or Mike Hanson.</p> <p>7 Q. Do you recall being provided a copy of the 8 final appraisal?</p> <p>9 A. I don't recall.</p> <p>10 Q. If you look at the e-mail on the cover, you see 11 that it was provided to you?</p> <p>12 A. Yes, I do.</p> <p>13 Q. Did you understand that the appraisal 14 determined -- it is called a valuation report, 15 but the appraisal determined that as of 16 December 31, 2002 that the assets of the 17 Montana Power Company were valued at 18 \$1.5 billion?</p> <p>19 A. I don't have a recollection of that. I see 20 that on page 3 as, one, I believe they use 21 typically several different methods of 22 valuation. So I don't know if that's an 23 average or if that's one of several that they 24 chose. I don't know.</p> <p>25 Q. Was that the valuation report that was provided</p>	<p>1 Q. So it's not your recollection that it closed in 2 or around the middle of November of 2002?</p> <p>3 A. It's my recollection it closed sometime in 4 October or November, but I don't have a date.</p> <p>5 Q. So this valuation, as far as your recollection 6 goes, was done shortly after the closing of the 7 going-flat?</p> <p>8 A. That I do not know. Let me see the date of 9 this.</p> <p>10 Q. It says "As of 12/31/2002."</p> <p>11 A. I see that. But the e-mail is January 30th and 12 oftentimes appraisals are as of a date but the 13 work is conducted well after that date but 14 delivered with a reference date. So the fact 15 that it's December 31st doesn't mean it was 16 done as of that date. And in fact, it could 17 have been finished sometime in January and then 18 delivered.</p> <p>19 Q. But it values the assets at an as-of date, 20 correct?</p> <p>21 A. That's correct.</p> <p>22 Q. So what the report says is as of the end of 23 2002 this was the value of the asset, correct?</p> <p>24 A. That's correct. That was different than the 25 question then when it was prepared.</p>
<p style="text-align: right;">Page 163</p> <p>1 by the company to CSFB?</p> <p>2 A. I don't know. I assume it was.</p> <p>3 Q. If you look at the last page, 56.</p> <p>4 A. (Reviews document.)</p> <p>5 Q. Do you see that it says "Conclusion of fair 6 value"?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Now, did you understand the amount of 9 liabilities that were assumed by NorthWestern 10 in connection with the going-flat transaction?</p> <p>11 A. I don't understand the question. Did I 12 understand the amount of the liabilities?</p> <p>13 Q. Did you have an understanding of the amount of 14 the liabilities assumed by NorthWestern in 15 connection with the going-flat transaction?</p> <p>16 A. Originally?</p> <p>17 Q. In November of 2002.</p> <p>18 A. Oh, no, I don't have a recollection.</p> <p>19 Q. Now, this valuation as of 12/30/2002 was 20 several weeks after the going-flat transaction, 21 correct?</p> <p>22 MR. BRENNER: He's already said 23 several times he doesn't remember when it 24 closed.</p> <p>25 BY MS. STEINGART:</p>	<p>1 Q. As general counsel of NorthWestern, did you do 2 an assessment of the value of the assets being 3 transferred and the liabilities assumed by 4 NorthWestern in connection with the going-flat 5 transaction?</p> <p>6 A. I did not.</p> <p>7 Q. Was any determination made about whether there 8 was a disparity in value with respect to the 9 assets transferred and the liabilities assumed?</p> <p>10 A. I don't recall.</p> <p>11 Q. Did anyone ask for such an assessment to be 12 made?</p> <p>13 A. I don't recall.</p> <p>14 Q. Did anyone on behalf of Montana Power indicate 15 that in order to protect the creditors of 16 Montana Power, that an assessment of the assets 17 transferred and liabilities assumed should be 18 made?</p> <p>19 MR. KALECZYC: Objection.</p> <p>20 THE WITNESS: By Montana Power, do you 21 mean the trust or the QUIP structure, 22 because Montana Power was no longer around?</p> <p>23 BY MS. STEINGART:</p> <p>24 Q. NorthWestern, it had a different name at the 25 time of the going-flat transaction, correct?</p>

<p style="text-align: right;">Page 166</p> <p>1 A. Right.  2 Q. It was called NorthWestern Energy, I think. I  3 don't remember. Can we agree that when we talk  4 about the Montana Power Company we are talking  5 about the company that was acquired in February  6 of 2002?  7 A. All right.  8 Q. And whose assets were transferred in connection  9 with the going-flat transaction?  10 A. Yes.  11 Q. So at the time of that transaction, did anyone  12 who was an officer or director of the Montana  13 Power Company or its successor raise issues  14 with respect to the value of the assets being  15 transferred and the liabilities being assumed?  16 MR. KALECZYC: Objection.  17 MR. PIZZURRO: I'm going to make an  18 objection. I think the record is really  19 getting muddy as to what entities we are  20 talking about. I know they have similar  21 names, but my best recollection is Montana  22 Power Company was one of the entities that  23 was on -- sold the unit interests in  24 Montana Power, LLC which was acquired by  25 NorthWestern in that transaction, closed in</p>	<p style="text-align: right;">Page 168</p> <p>1 based on what our understanding was of the  2 structure of part of NorthWest before the  3 acquisition of Montana Power, after the  4 acquisition of Montana Power which would be  5 page 2, and page 3 is after the going-flat.  6 Now, I guess my question is: Looking  7 at page 2, is it your understanding that the  8 assets of the Montana Power Company were held  9 by or held in the form of NorthWestern Energy  10 Montana after the acquisition of the Montana  11 Power Company?  12 A. Immediately -- again, I'm not familiar with  13 this chart.  14 Q. Uh-huh.  15 A. I see that it shows South Dakota and Nebraska  16 operations down a couple of tiers and, in fact,  17 those were an unincorporated division of the  18 parent.  19 Q. I see, okay.  20 A. So right away there is a disconnect there.  21 But I can testify that immediately  22 following the acquisition, NorthWestern  23 Corporation acquired all of the outstanding  24 ownership interests of a limited liability  25 company and the assets of the limited liability</p>
<p style="text-align: right;">Page 167</p> <p>1 February of 2002 which then was renamed, if  2 I can recall correctly, NorthWestern  3 Energy, LLC subsequently was renamed Clark  4 Fork and Blackfoot.  5 BY MS. STEINGART:  6 Q. And at the time of the going-flat transaction,  7 the successor to the Montana Power Company was  8 NorthWestern Energy, LLC?  9 MR. KALECZYC: Objection.  10 MR. PIZZURRO: I'm going to object and  11 I'm not going to testify, but that's not my  12 understanding.  13 MR. KALECZYC: It's successor is vague  14 and ambiguous.  15 MS. STEINGART: Montana Power, LLC?  16 Let's see if we can help.  17 (Off the record.)  18 (Deposition Exhibit Number 26 marked  19 for identification.)  20 BY MS. STEINGART:  21 Q. Let's see if we can be clearer.  22 A. (Reviews document.)  23 Q. Now, I guess the question, you know, there are  24 three org charts here that are not NorthWestern  25 documents, okay, that we have put together</p>	<p style="text-align: right;">Page 169</p> <p>1 company with the utility operations of the  2 Montana Power Company.  3 Q. Were they placed in a subsidiary of  4 NorthWestern Energy?  5 A. By virtue of acquiring all of the limited  6 liability company interests, you in effect had  7 the subsidiary.  8 Q. At the time of the going-flat transaction or  9 thereafter when this appraisal was prepared,  10 the appraisal was of certain underlying assets  11 acquired from Montana Power, is that correct?  12 A. I believe so.  13 Q. And these were the assets that were transferred  14 to NorthWestern in connection with the  15 going-flat transaction, correct?  16 A. I believe that's correct.  17 Q. Okay. At the time of the going-flat  18 transaction, did any of the officers or  19 directors of the entity that held the Montana  20 Power assets question, to your knowledge, the  21 disparity in value of the assets transferred  22 and the liabilities assumed by NorthWestern in  23 the going-flat?  24 MR. PIZZURRO: Objection.  25 MR. KALECZYC: Objection.</p>

<p style="text-align: center;">Page 170</p> <p>1        THE WITNESS: Several aspects of that  2        question I'm not commenting on any  3        disparity or lack thereof, I don't know.</p> <p>4        BY MS. STEINGART:  5        Q. Okay.  6        A. The entity was a wholly owned limited liability  7        company, a single member LLC, there is not a  8        board of directors. There is a managing  9        member, I believe that that was NorthWestern  10      corporation although I don't specifically  11      recall. So there was not a body, a board that  12      was part of that entity.  13      Q. Did anyone -- so no one on behalf of either the  14      creditors or shareholders of any entity that  15      had an interest in those assets questioned the  16      legitimacy of the going-flat transaction?  17      MR. PIZZURRO: Objection.  18      MR. KALECZYC: Objection.  19      THE WITNESS: The only shareholder  20      with an equity interest was NorthWestern.  21      I don't know what creditors undertook in  22      terms of the process.  23      BY MS. STEINGART:  24      Q. Now, were there in connection with the  25      going-flat transactions documents signed by the</p>	<p style="text-align: center;">Page 172</p> <p>1        BY MS. STEINGART:  2        Q. Now, were you involved in the restatement of  3        the NorthWestern financials for Q-1, Q-2 and  4        Q-3 that took place in 2003?  5        A. Yes.  6        Q. And these were restatements of the Q-1, Q-2,  7        Q-3 for 2002?  8        A. Correct.  9        Q. That were done in 2003?  10      A. Yes, in connection with filing the 10-K.  11      Q. And at that time were you still chair of the  12      disclosure committee?  13      A. I believe so.  14      Q. At what point did you leave NorthWestern?  15      A. I believe I left in or around December of 2004.  16      Q. What were the circumstances of your separation  17      from NorthWestern?  18      A. In connection with the filing of the bankruptcy  19      proceedings, I and other executives were  20      retained in connection with that process and  21      provided incentives to assist NorthWestern in  22      exiting that process and stayed on through the  23      exiting of the bankruptcy. And then following  24      that closing of that proceeding then left  25      NorthWestern.</p>
<p style="text-align: center;">Page 171</p> <p>1        entity that held those assets, the Montana  2        Power Company assets?  3        A. I believe so.  4        Q. And who had the authority to sign those  5        documents?  6        A. I don't recall specifically. There was  7        signature authority guidelines at NorthWestern  8        for signing documents.  9        Q. To the extent that there were creditors of the  10      successor to the Montana Power, LLC, who  11      reviewed the transaction on their behalf?  12      MR. PIZZURRO: Objection.  13      MR. KALECZYC: Objection.  14      THE WITNESS: I don't know.  15      NorthWestern would have reviewed the terms  16      of its credit agreements and to comply with  17      those, I don't know what work was done on  18      behalf of the creditors.  19      BY MS. STEINGART:  20      Q. And certainly there was no fairness opinion  21      done that the going-flat transaction was fair  22      from a financial point of view to the creditors  23      of the successor to the Montana Power, LLC?  24      MR. PIZZURRO: Objection.  25      THE WITNESS: Not that I recall.</p>	<p style="text-align: center;">Page 173</p> <p>1        Q. What did you do to prepare for today's  2        deposition?  3        A. I met with counsel last night.  4        Q. Okay. Did you meet with or talk with anyone on  5        behalf of -- who was representing NorthWestern?  6        A. I did not.  7        Q. Did you speak with or talk with anyone who  8        represented Mr. Hanson, Mr. Kindt?  9        A. I did not.  10      Q. Did you speak to anyone other than your counsel  11      about this deposition, I mean other than  12      telling people where you were going to be?  13      A. I did not.  14      Q. Were you aware that NorthWestern Corporation  15      entered into a consent decree with respect to a  16      cease and desist proceeding that the SEC had  17      commenced against NorthWestern?  18      A. Yes.  19      Q. How were you aware of that?  20      A. There was a press release to that effect.  21      Q. Did you participate in the -- strike that.  22      Had the SEC commenced its  23      investigation that led up to that cease and  24      desist before your separation from  25      NorthWestern?</p>

<p style="text-align: right;">Page 174</p> <p>1 A. Yes.    2 Q. In your capacity as general counsel, did you    3 participate in -- on behalf of NorthWestern in    4 that investigation?    5 A. Yes.    6 Q. What was the status of that investigation at    7 the time that you left NorthWestern?    8 A. It had not concluded.    9 Q. Have you had an opportunity to review the    10 actual cease and desist order that was entered?    11 A. I have.    12 (Deposition Exhibit Number 27 marked    13 for identification.)    14 BY MS. STEINGART:    15 Q. I'd like to show you what we've marked as    16 Jacobsen 27 and ask you if you recognize this    17 to be the Order instituting cease and desist    18 proceedings, making findings and imposing a    19 cease and desist order in connection with the    20 SEC's investigation of NorthWestern?    21 A. (Reviews document.) Yes.    22 Q. Now, having participated in the restatement of    23 the 2002 financials and in the preparation of    24 the year-end 2002 10-K, is it your    25 understanding that during the first three</p>	<p style="text-align: right;">Page 176</p> <p>1 second quarter 10-Qs, I believe. And in those    2 restatements headed the disclosure that we    3 looked at in the comment letter.    4 Q. So at the initial time that you restated the    5 10-Qs, there were no additional disclosures    6 about the functionality of Expert, correct?    7 A. Correct.    8 Q. So in the restatement of the 10-Q in 2003 for    9 the first quarter, there was a -- an adjustment    10 with respect to functionality of Expert, correct?    11 A. I don't know -- by "adjustment," do you mean a    12 financial adjustment, or do you mean additional    13 disclosure text?    14 Q. It was additional disclosure text.    15 A. I don't recall.    16 Q. Is it your understanding that the text was    17 changed to indicate that during the first    18 quarter of 2002, that Expert was not fully    19 operational?    20 A. I don't recall.    21 Q. As you sit here today, though, you know that    22 that's the case, don't you? That Expert -- you    23 know aside from the disclosure, you know that    24 it was the case that during the first quarter</p>
<p style="text-align: right;">Page 175</p> <p>1 quarters of 2002 NorthWestern filed quarterly    2 and current reports with the Commission that    3 materially misstated NorthWestern's financial    4 position at that time?    5 A. That's clearly the finding of the Commission.    6 Q. And is that something that you understood as a    7 result of the restatements that you prepared on    8 behalf of NorthWestern?    9 A. The restatements had many different aspects to    10 them, some were quite small in amount, some    11 larger. So some were material, others I did    12 not view as material.    13 Q. Was -- you know, is it your understanding that    14 any of the restatements for Q-1, Q-2 or Q-3, as    15 a whole, were not material?    16 A. I don't know.    17 Q. Do you recall the substance of the matters that    18 were restated in the first quarter of 2002?    19 A. No.    20 Q. Is it your understanding that it included    21 advances from NorthWestern to Expanets?    22 A. The company had more than one restatement. And    23 so as a result of the S-4 registration process    24 and the SEC comment letter process, we -- or    25 NorthWestern, I believe, restated the first and</p>	<p style="text-align: right;">Page 177</p> <p>1 of 2002 Expert was not fully operational?    2 A. As I sit here today, I do know that Expert was    3 not performing to the desired level.    4 Q. As you sit here today, do you have an    5 understanding that there were also adjustments    6 with respect to earnings that were reported in    7 the first quarter 10-Q?    8 A. I don't recall.    9 Q. Why did NorthWestern decide to file an amended    10 first quarter 10-Q in 2003?    11 A. As a result of the information that    12 NorthWestern received at the end of November,    13 which we looked at concerning Expanets, and the    14 review by the audit committee and then later in    15 connection with valuations of the investment in    16 both Blue Dot and Expanets, it became clear    17 that there would be substantial write-offs of    18 the investment in those two entities.    19 And then in connection with filing a    20 10-K, the desire was to absolutely -- and the    21 instruction from the board was to absolutely    22 address any open issue or make any kind of    23 disclosure that it thought to be appropriate to    24 try to address any potential issue out there so    25 that you could set a clean starting point with</p>

<p style="text-align: center;">Page 178</p> <p>1 the 10-K that was filed in, I believe, April of 2 2003.</p> <p>3 Q. So what process did you use internally to 4 decide what material in the first quarter 10-K 5 needed to be restated?</p> <p>6 A. There was extensive work done by the outside 7 accountants with people on-site at all of the 8 operating companies. There were third-party 9 financial consultants brought in, both 10 financial advisory and operational consultants. 11 And there was additional counsel retained, all 12 of whom participated.</p> <p>13 Q. And was the conclusion of all of those 14 participants that the first quarter 10-Q for 15 2002 should be restated?</p> <p>16 A. We filed a restated 10-Q, yes. I don't know 17 what the conclusion of each individual 18 participant was in the process, but it resulted 19 in us filing a 10-Q that was restated.</p> <p>20 Q. And when you say "it was decided," was it a 21 decision that you participated in or that was 22 communicated to you by somebody else?</p> <p>23 A. I believe the process was primarily driven by 24 the accountants because in that situation the 25 company will do whatever the accountants tell</p>	<p style="text-align: center;">Page 180</p> <p>1 2002 was materially misleading?</p> <p>2 A. No.</p> <p>3 Q. Do you have any reason, as you sit here today, 4 to dispute the SEC's conclusion that the 10-K 5 filed by NorthWestern for the second quarter of 6 2002 was materially misleading?</p> <p>7 A. The 10-Q?</p> <p>8 Q. Do you have any reason, as you sit here today, 9 to dispute the SEC's conclusion that the 10-Q 10 for the second quarter of 2002 was materially 11 misleading?</p> <p>12 A. I do not.</p> <p>13 Q. Same question with respect to the third quarter 14 10-Q.</p> <p>15 A. I do not.</p> <p>16 Q. The SEC also concluded that in its filings 17 after the effective taxes, NorthWestern 18 overstated its income from continuing 19 operations for the first three quarters of 2002 20 by approximately 176 percent, 618 percent and 21 109 percent, respectively.</p> <p>22 MR. BRENNER: Can you tell us where 23 you are reading from?</p> <p>24 MS. STEINGART: I'm reading from 25 page 2, summary.</p>
<p style="text-align: center;">Page 179</p> <p>1 them to do in order to get them to sign off on 2 the 10-K which required audited financial 3 statements.</p> <p>4 Q. So is it your testimony that you restated the 5 first quarter 10-Q for 2002 because you needed 6 to do that in order for the auditors to sign 7 off on the year-end 10-K for 2002?</p> <p>8 A. It's my recollection that there was not a 9 complete consensus on whether all of the 10 proposed restatements were necessary. And it 11 was a discussion amongst the financial group 12 and the auditors. And I believe that in the 13 context of NorthWestern at the time which was 14 the public release on this new information from 15 Expanets and the likelihood of a substantial 16 write down of the investment which then 17 ultimately was reflected in the 10-K that the 18 company should follow whatever recommendation 19 was made by the auditors in that respect as 20 opposed to try to argue for a new result. 21 That's my recollection of the financial 22 discussion.</p> <p>23 Q. Do you have any reason, as you sit here today, 24 to dispute the conclusion of the SEC that the 25 first quarter 10-K filed by NorthWestern in</p>	<p style="text-align: center;">Page 181</p> <p>1 BY MS. STEINGART:</p> <p>2 Q. Do you have any reason to believe that the SEC 3 is incorrect in that conclusion?</p> <p>4 A. I have no idea how those numbers were 5 calculated. So, no comment.</p> <p>6 Q. The SEC also concluded that NorthWestern 7 overstated its income during the first three 8 quarters of 2002 due to the company's improper 9 accounting for accounts receivable, adjustments 10 to customers' bills, allocation of losses 11 to -- and allocation of losses to minority 12 interests.</p> <p>13 Do you have any reason to dispute that 14 conclusion?</p> <p>15 A. No.</p> <p>16 Q. The SEC also concluded that NorthWestern also 17 misrepresented or did not disclose, among other 18 things, the effects of significant problems 19 with Expanets' new information technology 20 system, the material impact of Expanets' 21 reserve reductions and its receipt of 22 non-compete payments on Expanets' income, large 23 company advances to NorthWestern, advances 24 NorthWestern made to support Expanets and 25 Blue Dot and the timing of anticipated payments</p>

<p style="text-align: right;">Page 182</p> <p>1 from the sale of certain utility assets.    2 Do you have any reason to disagree    3 with that conclusion?    4 A. No.    5 Q. The SEC also concluded that through its    6 financial statements, misrepresentations and    7 omissions, NorthWestern obscured the continuing    8 poor performance of its subsidiaries.    9 Do you have any reason to disagree    10 with that conclusion?    11 A. No.    12 Q. Now, the SEC looked at a number of items that    13 contributed to the conclusions that    14 NorthWestern had materially misstated its    15 quarterly reports during 2002.    16 Are the items in the Consent Decree    17 that the SEC has mentioned items that you dealt    18 with in connection with your restatement of the    19 quarterly reports?    20 A. I don't recall.    21 Q. Should we take a short break so that you can    22 look at this and refresh yourself because I'm    23 going to ask you about it.    24 THE WITNESS: Let's take a quick bio    25 break and keep going.</p>	<p style="text-align: right;">Page 184</p> <p>1 both Expanets and Blue Dot would achieve 2002    2 targeted earnings and begin providing cash to    3 the NorthWestern consolidated entity in 2002?    4 A. I believe statements to that effect were made    5 at various times during the year.    6 Q. Now, NorthWestern conducted its equity offering    7 during the third quarter of 2002 and raised    8 approximately \$87 million, correct?    9 A. That's correct.    10 Q. And also during the third quarter of 2002    11 NorthWestern completed its registration in    12 exchange of new notes for 720 million of debt    13 it incurred to purchase Montana Power, is that    14 true?    15 A. Yes.    16 Q. And it was during the fourth quarter that    17 NorthWestern completed the going-flat    18 transaction, correct?    19 A. I believe that's true.    20 Q. Now, in December 2002 NorthWestern disclosed    21 that significant operational problems at    22 Expanets and Blue Dot would materially impact    23 the company's consolidated year-end financial    24 results, correct?    25 A. Yes.</p>
<p style="text-align: right;">Page 183</p> <p>1 (Recess.)    2 BY MS. STEINGART:    3 Q. I'm on page 3 of the Cease and Desist and I'm    4 on paragraph 7.    5 A. (Reviews document.)    6 Q. Now, it's correct, is it not, that the    7 magnitude of NorthWestern's increased debt as a    8 result of the Montana Power acquisition    9 threatened the company's credit ratings?    10 A. I believe it's accurate that incurring that    11 much additional debt would be a negative factor    12 for credit rating agencies.    13 Q. And as a result NorthWestern announced its    14 intention to conduct an equity offering during    15 2002 to raise approximately 200 million to pay    16 down its debt and improve its debt equity    17 ratios.    18 That's true, isn't it?    19 A. NorthWestern did announce that as a plan.    20 Q. And NorthWestern recognized that improvement in    21 the performance of both Expanets and Blue Dot    22 was critical to its planned equity offering,    23 correct?    24 A. It was a relevant factor.    25 Q. And NorthWestern made public statements that</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. And that announcement came after the equity    2 offering, correct?    3 A. Yes.    4 Q. And after the registration and exchange of the    5 new notes, correct?    6 A. Yes.    7 Q. And after the completion of the going-flat    8 transaction?    9 A. Yes.    10 Q. Now, I'm looking further down on page 4, the    11 points relating to the Expert system. "The    12 functionality of the Expert system was critical    13 to Expanets," correct?    14 A. Are you reading from a particular paragraph?    15 Q. I'm just asking for that portion.    16 A. It was one aspect of Expanets' operations. Top    17 line sales were more important, collections are    18 less important. If you are not getting any    19 sales, there is nothing to collect.    20 Q. In fact, ultimately, Expanets had sales without    21 collections, didn't they?    22 A. For a period of time I think subsequently they    23 actually collected many of these receivables.    24 Q. Following its implementation 2001, the Expert    25 system was unable to perform many of the basic</p>

Page 186	Page 188
1 tasks for which it had been designed, that's 2 correct, isn't it? 3 A. I believe that's true as we sit here today, 4 yes. 5 Q. And the problems with Expert materially 6 affected Expanets' results from operations 7 throughout 2002, isn't that true? 8 A. I believe that's correct. 9 Q. NorthWestern's forms 10-Q for the first and 10 second quarters of 2002 and associated press 11 releases attached to Form 8-K mischaracterized 12 Expert's billing system -- I'm sorry, billing 13 activities as fully operational or operational 14 and failed to adequately disclose the magnitude 15 of the system's problems and the material 16 impact of those problems on Experts' 17 operations, that's correct, isn't it? 18 A. That is the SEC's finding. 19 Q. And as you sit here today, do you have any 20 reason to believe that that's not correct? 21 A. I don't have a view one way or the other on 22 that. Depending on what you mean by 23 "operational" or "fully operational," the 24 disclosures at the time were consistent with 25 the available information to me.	1 failed to adequately disclose the magnitude of 2 the problem, do you disagree with that? 3 A. I don't know. 4 Q. Do you disagree that the first two 10-Qs for 5 2002 failed to disclose the material impact of 6 the Expert problems on Expanets' operations? 7 A. As I sit here today, those disclosures were 8 revised in connection with the filing of the 9 amended and restated 10-Qs. 10 Q. And you revised them because you were making 11 them correct? 12 MR. BRENNER: The "you" here is who? 13 BY MS. STEINGART: 14 Q. NorthWestern revised them in order for the 15 amended 10-Qs to be correct? 16 A. Correct. 17 Q. In its Form 10-Q for the third quarter 2002 18 NorthWestern disclosed that Expert had 19 encountered some problems particularly as to 20 billings and collections but did not disclose 21 the extent to which these system problems had 22 impacted Expanets' operations. That's correct, 23 isn't it? 24 A. That is the SEC's finding, yes. 25 Q. Do you have any reason to disagree with that?
Page 187	Page 189
1 Q. Sir, you helped to restate the financials for 2 the first and second quarter of 2002, correct? 3 A. Yes -- excuse me, I helped to restate the 10-Q 4 reports, not the financial statements. 5 Q. You helped to restate the 10-Q reports for the 6 first and second quarter of 2002, correct? 7 A. That's correct. 8 Q. And from your point of view, the restatements 9 that you prepared as general counsel during 10 that period were correct -- 11 MR. BRENNER: Object to the form. 12 BY MS. STEINGART: 13 Q. -- strike that. 14 When you prepared the restatements for 15 filing, was it your understanding that the 16 restatements were correct? 17 A. Yes. 18 Q. And as you sit here today, did those 19 restatements impact disclosures that are 20 referenced in the first sentence of 21 paragraph 13? 22 A. There was additional disclosure regarding the 23 Expert matters, yes. 24 Q. So the portions of that first sentence that you 25 disagree with are whether the initial filings	1 A. I don't recall any reason to disagree. 2 Q. Now, during 2002, I'm looking at paragraph 15, 3 Expanets' bad debt reserve was inadequate, 4 correct? 5 A. I don't know, that's a financial statement 6 determination. 7 Q. And is that a -- an adjustment that was made to 8 the amended 10-Qs that were filed in 2003? 9 A. I believe it was. 10 Q. And is it your understanding that that 11 amendment was made in order to make the 10-Qs 12 accurate? 13 MR. BRENNER: More accurate? 14 THE WITNESS: I think the changes were 15 intended to make them more accurate but a 16 bad debt reserve is prospective in nature, 17 so later events would prove whether or not 18 it was ultimately accurate or not. It is 19 by nature a projection. 20 BY MS. STEINGART: 21 Q. It's your understanding that the thrust of the 22 SEC conclusion is that it was a projection that 23 should have been made during 2002? 24 A. I believe that's correct. 25 Q. And do you have any reason, as you sit here

9

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

Civil Action No. C.A. No. 04-1494 (JJF)

MAGTEN ASSET MANAGEMENT CORPORATION and  
LAW DEBENTURE TRUST COMPANY OF NEW YORK,  
Plaintiffs,  
v.  
NORTHWESTERN CORPORATION,  
Defendant.

Civil Action No. C.A. No. 05-499 (JJF)

MAGTEN ASSET MANAGEMENT CORP.,

Plaintiff,

V.

MICHAEL J. HANSON and ERNIE J. KINDT,

Defendants.

DEPOSITION OF: RICHARD FRESIA - April 30, 2007

PURSUANT TO SUBPOENA, the deposition of RICHARD FRESIA was taken on behalf of the Plaintiffs at 1900 Grant Street, Suite 800, Denver, Colorado 80203, on April 30, 2007, at 10 a.m. before Lisa A. Knight, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public within Colorado.

		Page 2			Page 4
1	APPEARANCES				
2	For the Plaintiffs: GARY L KAPLAN, ESQ.			11	Order Instituting Cease-and-Desist
3	Magten Asset Management Corp. PHILIP Z. KIMBALL, Esq.				Proceedings 76
4	Fried, Frank, Harris, Shriver & Jacobson LLP			12	Memorandum to Disclosure Committee
5	One New York Plaza			96	from Expanets' Disclosure
	New York, New York 10004-1980				Subcommittee, 3/25/03
8	For the Defendant: JENNIFER A. BAGNATO, ESQ.			13	Timeline to Key Events (ultimately)
9	NorthWestern Curtis, Mallet-Prevost, Colt			103	leading to 12/31/02 reserve
10	Corporation & Mosle LLP			14	Management Financial and Information
11	101 Park Avenue				Report Meeting, 2002 Calendar 114
12	New York, New York 10178-0061			7	
13	For the Defendants: DANIEL J. AUERBACH, ESQ.			8	
14	Michael J. Hanson Browning, Kalczyk, Berry &			9	
15	and Ernie J. Kindt Hoven, P.C.			10	
16	Northern Pacific Building			11	
17	100 West Railroad Street			12	
18	Suite 200			13	
19	Missoula, Montana, 59802			14	
20				15	
21				16	
22				17	
23				18	
24				19	
25				20	
				21	
				22	
				23	
				24	
				25	
		Page 3			Page 5
1	INDEX				
2	EXAMINATION OF RICHARD FRESIA: April 30, 2007	PAGE			
3	By Mr. Kaplan	5			
4	DEPOSITION EXHIBITS: INITIAL	REFERENCE			
5	1 Notice of Service of Subpoena (Rick Friesa [sic])	5		1	WHEREUPON, the following proceedings were
6	2 NorthWestern Management Financial and Information Report for Month Ended June 30, 2002	15		2	taken pursuant to the Federal Rules of Civil Procedure.
7	3 E-mail string, top e-mail to Hyland from Lewis, 4/9/02, Subject: RE: Board	21		3	* * * * *
8	4 Form 8-K, NorthWestern Corp. - NWEA, 8/8/02	35		4	RICHARD FRESIA,
9	5 E-mail string, top e-mail to Whitesel from Fresia, 8/14/02, Subject: FW: DRAFT Language on billing adjustments	39		5	having been first duly sworn to state the whole truth
10	6 NorthWestern Corporation, August 8, 2002, Transcript of Earnings Call	45		6	testified as follows:
11	7 E-mail to Onnix from Fresia, 7/3/02, Subject: RE: Update - Billings and Collections IT Fix Schedule	49		7	EXAMINATION
12	8 E-mail string, top e-mail to Hyland from Fresia, 9/1/02, Subject: RE: Expanets cash forecast	50		8	BY MR. KAPLAN:
13	9 Form 8-K, NorthWestern Corp. - NWEA, 5/1/02	56		9	Q. Good morning. I'm Gary Kaplan from Fried,
14	10 E-mail string, top e-mail to Fresia and others from Charters, 6/5/02, Subject: RE: Convenant on Daily Flash Report	60		10	Frank, Harris, Shriver & Jacobson on behalf of Magten Asset Management.
15				11	I'm going to place before you what we're going
16				12	to mark as Plaintiff's Exhibit 1.
17				13	(Deposition Exhibit 1 was marked.)
18				14	Q. I'm handing to you the subpoena that was
19				15	served in this action. Are you here today pursuant to
20				16	the subpoena?
21				17	A. Yes, I am.
22				18	Q. Okay.
23				19	A. I think as modified.
24				20	MR. ZISSE: Or maybe not modified.
25				21	A. My name is misspelled, and the man came much
				22	later than courteous. But other than those two things.
				23	Q. (BY MR. KAPLAN) We apologize for the late
				24	arrival and for the misspelling.
				25	

2 (Pages 2 to 5)

<p style="text-align: center;">Page 70</p> <p>1 of in the ability -- getting asked questions, having to 2 respond were Charters and Fresia. 3 The whole thing had expanded now where 4 everybody felt like they had skin in the game. So Marty 5 Snella, who had been the person who I, to this day, 6 still think very highly of, who I was in some ways 7 feeling -- I don't know what the correct emotion was but 8 frustrated that he was never getting any of these 9 questions -- and it was clear to anybody who rationally 10 would think about this is that you should be asking the 11 guy who's trying to fix the system, when is it going to 12 be fixed, not the guy who is trying to collect the 13 money. 14 All of a sudden, he's now energized in being 15 involved in this. So we now have seven people who are 16 very much saying no, we didn't know that at this point. 17 We knew this. No, that's a lie. So on and so forth. 18 Q. Take it step by step. The committee met, 19 retained its own lawyer, sent a draft back to 20 NorthWestern. 21 A. Correct. 22 Q. And do you recall who it was sent to? 23 A. It would be sent back to Gary Drook and Kipp 24 Orme and Kurt Whitesel and Kendall Kleever but not to 25 Mike Hanson, for example, because he is not part of the</p>	<p style="text-align: center;">Page 72</p> <p>1 A. Bruce Smith, I think. 2 Q. And what did Mr. Smith tell you when you 3 raised the concerns to him? 4 A. He acted surprised about the whole thing and 5 very much wanting to get to the bottom of it. And he 6 said, I'll get back to you in a couple of days. And 7 then a couple of days turned into a week and I hadn't 8 heard back, so I called him again. And I don't know if 9 I got ahold of him or not, but he basically went dark. 10 Q. And so then what did you do next? 11 A. By that time, I -- you know, we had gotten to 12 the point where we had our conversation where 13 NorthWestern came in, Bill Austin and the head of HR, 14 and said, You know why we're here. I said, I don't. 15 And they said, Well, we think you should leave. And I 16 said, Under what grounds? And they said, Suppression of 17 information. 18 And I said, What does that mean? Well, you 19 knew a bunch of stuff and you didn't tell anybody. 20 Well, I said, that's ludicrous. 21 Is this something to do with retaliation under 22 my whistle-blowing of -- on Sarbanes-Oxley? And they 23 said -- they acted shocked that I had called Bruce 24 Smith. They didn't seem to know about it. 25 But this whole thing at that point had an air</p>
<p style="text-align: center;">Page 71</p> <p>1 corporate group, per se, at the time. 2 Q. And you mentioned one e-mail back with 3 Mr. Younger, I believe. But what was the next step? 4 You guys sent a draft back and then what happened? 5 A. Ultimately, I want to say I'm not even sure I 6 was around when the cake came out because I believe they 7 filed an extension. So I left the first few days in 8 May, and I'm not sure how it came out. Like I said, 9 five minutes after I left, I just tuned the whole thing 10 out. 11 Q. But in terms of your role in this, after you 12 got back -- after you sent back your draft to 13 NorthWestern, how did you hear that they were -- didn't 14 like your comments, for lack of a better word, or 15 weren't going to take your comments? 16 A. I'm not sure that they didn't take them. It 17 was one of these, they tried to get us to sign off on 18 the original piece. And the fact that they even 19 attempted without saying, Oh, we won't take these new 20 ones. 21 It was such a blatant issue that they had 22 tried to say, you know, this only happened within the 23 last month or two that I immediately went to the audit 24 committee chair. 25 Q. And the audit committee chair at the time was?</p>	<p style="text-align: center;">Page 73</p> <p>1 of damage control on their part, where Gary Drook and 2 company had -- you know, they were trying to put Humpty 3 Dumpty back together again. But it was one of these 4 things that was difficult because there was so many 5 e-mails and the like. 6 And I had a fairly robust recordkeeping 7 system. And I turned much, if not all, of my records 8 over. And it just seemed so odd that they would feel 9 like they could somehow go back in time and undo this 10 whole thing. 11 Q. And who did you turn those records over to? 12 A. Oh, everybody from -- who are the attorneys in 13 California? 14 Q. Paul Hastings? 15 A. Paul Hastings and the like and company 16 officials. 17 Q. And when, approximately, did you turn over 18 those records? 19 A. Everywhere from probably January until when I 20 left. 21 Q. Did you ever create -- besides anything that 22 your counsel told you to create, did you ever create any 23 timelines, letters, memos to files, anything else that 24 sort of laid out everything that happened? 25 A. I think it was basically in talking to David.</p>

<p style="text-align: right;">Page 74</p> <p>1 Q. Okay. But nothing that wasn't done, nothing 2 that wouldn't have been done?</p> <p>3 A. Well, some I turned over to -- you know, memos 4 to file and the like to NorthWestern. And then I have 5 others that I haven't turned over.</p> <p>6 Q. Just to be clear, there were memos to file 7 that you did -- there were NorthWestern memos to file 8 that you had done regarding this situation?</p> <p>9 A. I'm not sure that there are memos to file as 10 much as just having -- you know, many of these e-mails 11 that you folks have, I don't know if you -- at what 12 point in the discovery you got them, but they came from 13 me originally; not that I had written them originally, 14 that I had saved them originally.</p> <p>15 So you may have gone and done some forensic 16 work and found them in the system but some of it was 17 easy pickins because I just turned it over to Paul 18 Hastings.</p> <p>19 Q. Did you ever create a timeline or any type 20 of -- something, again, besides what David told you to 21 create?</p> <p>22 MR. ZISSE: Well, I mean, if you're -- you 23 can answer that.</p> <p>24 A. Yeah. I'm looking at him because I don't 25 recall whether David and I created it together or I did</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Have you read the -- have you seen the 2 Complaints that the SEC filed against Mr. Hylland and 3 others?</p> <p>4 A. I don't believe I have.</p> <p>5 Q. Have you seen the cease and desist -- the 6 findings made by the SEC regarding NorthWestern?</p> <p>7 A. I don't believe I have. I know I heard 8 Hylland had settled recently. Is that what you're 9 talking about?</p> <p>10 Q. There were a couple of settlements. 11 NorthWestern settled first, and that's what I'll show 12 first. And Mr. Hylland, Merle Lewis, Kipp Orme, Kendall 13 Kleever, Whitesel -- not Kleever, Whitesel, several 14 others settled within the last week. And we're going to 15 mark this as 11.</p> <p>16 (Deposition Exhibit 11 was marked.)</p> <p>17 Q. Again, you can take the time to read it. I'm 18 going to ask you in particular first to focus on page 4, 19 the problems relating to Expanets' computer system. 20 But, again, feel free to read as much as you want.</p> <p>21 A. As I read this, I don't think I've ever seen 22 this before.</p> <p>23 (Pause.)</p> <p>24 A. So there's a lot here on Expanets. Is there 25 anything you would like me to focus on?</p>
<p style="text-align: right;">Page 75</p> <p>1 it on my own. Yes, one was created.</p> <p>2 Q. (BY MR. KAPLAN) Did you ever share it with 3 NorthWestern?</p> <p>4 A. You know, I'm not sure. I think I may have, 5 but I'm not sure. By the time I created it, it was 6 really clear who the bad guys were and who the good guys 7 were. And there was really no love lost for the new 8 people.</p> <p>9 As much as Dick could be an asshole, he was, 10 you know, kind of, in some ways, a straight shooter and 11 a, you know, misguided kind of desk-pounding kind of 12 guy. These new people seemed genuinely dishonest. And 13 they scared me.</p> <p>14 Q. And I know I keep harping on this point but I 15 want to make clear that you never created a timeline at 16 NorthWestern or NorthWestern's counsel's direction.</p> <p>17 A. No, I don't believe so. It was either self- 18 directed or David's direction.</p> <p>19 Q. Okay. And then -- so is there anything else 20 with respect to the 10-K? After you tried to call 21 Mr. Smith, you're not sure whether you guys actually 22 connected the second time, and then you had the 23 conversation with Mr. Austin and others. Was there any 24 other discussion or communications regarding the 10-K?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. We're going to go through various sections, 2 but first, there are three paragraphs, 11, 12, and 13, 3 if you could read those first.</p> <p>4 (Pause.)</p> <p>5 A. Okay.</p> <p>6 Q. And starting with paragraph 12, based upon the 7 information that you had as the CFO of Expanets, is 8 anything in paragraph 12 -- is everything in paragraph 9 12 accurate?</p> <p>10 A. Yes.</p> <p>11 Q. And then the same question with respect to 12 paragraph 13.</p> <p>13 A. Yes.</p> <p>14 Q. Now we're going to turn to page 5, the aged 15 accounts receivable. I apologize, it's a longer 16 section.</p> <p>17 (Pause.)</p> <p>18 A. I don't know about 20, the percentages in 19 there. 17 doesn't seem accurate.</p> <p>20 Q. What do you believe is inaccurate about 17?</p> <p>21 A. These reports demonstrated Expanets' 22 uncollectible accounts receivable exceeded its existing 23 bad debt reserve. They didn't prove uncollectible. We 24 collected that money in the first quarter of '03. So it 25 seems inaccurate even with 20/20 hindsight.</p>

<p style="text-align: right;">Page 78</p> <p>1 Q. Okay. Other than paragraph -- is the rest of 2 paragraph 17 accurate other than that sentence? 3 A. Yeah, because that's a little bit like, "Other 4 than that, Mrs. Lincoln, how did you like the play?" 5 Q. Understand. But other than the percentages in 6 paragraph 20 and paragraph 17, perhaps the whole 7 paragraphs 14 through 20 are accurate with those 8 caveats? 9 A. Yes. 10 MR. ZISSER: Let me look at 15. 11 Q. (BY MR. KAPLAN) Well, 15 -- I'll say 12 that -- I'm happy to go through them one by one. 13 MR. ZISSER: Yeah. 14 A. 15 does smack a little bit of a 17 problem. 15 Q. (BY MR. KAPLAN) Well, let's start with 14. 16 Why don't we go paragraph by paragraph. 17 A. Okay. 14 looks okay. 18 Q. 15, I was not going to ask you since it talked 19 about aged receivables that predated implementation of 20 EXPERT. So you can answer it if you know, but I'm not 21 going to ask you to guess. 22 A. I don't. 23 Q. Okay. 16? 24 A. 16 is true. That's the 30 million that I 25 suggested we need to supplement into the bad debt</p>	<p style="text-align: right;">Page 80</p> <p>1 A. I don't have the numbers in front of me, but I 2 guess I would question as to whether the, in hindsight, 3 uncollectible amount, No. 1, whether it even truly 4 became uncollectible, because we're talking about this 5 as of the time of the K, is when this was known, or was 6 that enough to even swamp the boat. 7 Q. Well, when you're setting a reserve, it 8 doesn't mean that there's zero chance. If you're 9 setting, for example, bad debt reserve, it doesn't mean 10 there's zero chance of collecting, right? 11 A. Right. 12 Q. Is there a rule of thumb, for lack of a better 13 word, that you use when creating a reserve? 14 A. Historical collection ability, which, 15 historically, we were -- I think they were more 16 pessimistic than historical amounts. And so by setting 17 the historical amounts plus some, they would be basing 18 that on, you know, what was history. 19 I think the dilemma we've got is accounting, 20 by its very nature, is full of estimates, and there 21 isn't a whole lot of historical precedent of what if you 22 spent a hundred million dollars on a system and can't 23 collect on anything for a year. 24 Q. But going back into 18, where it says 25 NorthWestern did not disclose information indicating</p>
<p style="text-align: right;">Page 79</p> <p>1 reserve. 2 Q. Okay. 17, I just have one question. I 3 understand your very big caveat on that one. One 4 question: You said that all of the receivables were 5 collected in '03. Did you really mean all of them were 6 collected? 7 A. I would say all of the ones that -- again, I 8 don't have the documentation, but I know that we had 9 collections plans, and we were at something like 110 10 percent or 120 percent consistently through the first 11 few months of those collections plans. And those 12 collections plans would have included the old 13 receivables. 14 Q. Okay. But when you generated the collection 15 plan, did you, in essence, create your own reserve? I 16 mean, did you have a collection plan that assumed we're 17 going to collect everything or when you had it, you 18 assumed you're going to collect less than all and set a 19 target? 20 A. We all assumed we're going to collect less 21 than all even in a perfect, non-EXPERT world. But it 22 seemed like the plan was fairly aggressive. It wasn't 23 just saying, Hey, we'll collect this suboptimal amount, 24 and we did great against that. 25 Q. Then paragraph 18, is that accurate?</p>	<p style="text-align: right;">Page 81</p> <p>1 that a loss as a result of its uncollectible accounts 2 receivable was probable or reasonably possible. 3 A. Yeah. That's the part I'm taking exception 4 to, which is, even if we discount the fact that 5 collections gained traction in the first quarter of '03, 6 and we just did the sky-is-falling thing, I'm not 7 convinced that the uncollectible accounts receivable was 8 enough to completely eliminate the profitability of the 9 company. I don't know. That's a bold statement. 10 To say that indicating a loss, meaning not -- 11 no income, actually negative earnings as a result was 12 probable or reasonably possible. 13 Even with 20/20 hindsight, sitting here today, 14 I wouldn't agree with that statement. 15 Q. And then paragraph 19, is that accurate? 16 A. Those are just statements of fact. 17 Q. And then paragraph 20, understanding that you 18 can't vouch for the percentages. 19 A. I guess the one exception I would take to that 20 is the result of improper accounting. You know, for all 21 the reasons I've given already, which is I will tell you 22 at the time I was banging the drum, I was convinced we 23 should take the extra reserve, but Dick had some very 24 reasonable reasons in retrospect as to why he didn't 25 want to take them, the Avaya covering it. As soon as</p>

<p style="text-align: right;">Page 82</p> <p>1 it's fixed, we'll collect it kind of thing, so . . .</p> <p>2 Q. We'll get back to the document, but is it your</p> <p>3 view that Mr. Hylland was made a scapegoat by the</p> <p>4 company?</p> <p>5 A. Yeah. I have very mixed emotions because I</p> <p>6 disliked every moment I worked for the guy, but I think</p> <p>7 he was made a scapegoat.</p> <p>8 Q. Why do you think he was made the scapegoat?</p> <p>9 MR. ZISSER: Why did you come to the</p> <p>10 conclusion or are you asking him what the motivation</p> <p>11 was?</p> <p>12 MR. KAPLAN: No.</p> <p>13 Q. (BY MR. KAPLAN) Why do you think -- what</p> <p>14 leads you to the conclusion that he was a scapegoat?</p> <p>15 A. Well, I think that he's an easy target because</p> <p>16 nobody liked him. So, I mean, he wasn't revered, so it</p> <p>17 wasn't like there was a lot of defense coming to him.</p> <p>18 He had been getting counsel from me, you know,</p> <p>19 sometimes directly, sometimes indirectly, and he</p> <p>20 seemingly was ignoring it. And then when the time came</p> <p>21 to take the earnings charges in December, they kind of</p> <p>22 threw everything but the kitchen sink in there. So it</p> <p>23 was a perfect storm of being able to blame him.</p> <p>24 On top of that, Merle Lewis, who was the</p> <p>25 chairman, who ultimately was, like, Why don't we blame</p>	<p style="text-align: right;">Page 84</p> <p>1 verbally told them myself.</p> <p>2 So the fact that Dick knew and they didn't is</p> <p>3 ludicrous.</p> <p>4 I don't know about the board. I do know that</p> <p>5 we put all of those exceptions with our Sarbanes-Oxley</p> <p>6 disclosure committee in writing. I don't know if the</p> <p>7 board actually read them or not, but I specifically</p> <p>8 asked the question, are these available to the board?</p> <p>9 And I think the answer was something like, it isn't like</p> <p>10 we're going to purposely give them to them but if they</p> <p>11 ask, which any reasonable fiduciarily responsible audit</p> <p>12 committee would, they certainly are available to them.</p> <p>13 Q. And just to clarify, this isn't all by</p> <p>14 Mr. Hanson, so when I ask for senior management, I'm not</p> <p>15 trying to rope in Mr. Hanson.</p> <p>16 A. I just know he's a defendant.</p> <p>17 Q. He's only one.</p> <p>18 A. Okay.</p> <p>19 Q. But I'm just trying to get a sense. Again,</p> <p>20 the allegations against Mr. Hylland appeared to be that</p> <p>21 he was a rogue person that had all this information that</p> <p>22 was, in essence, suppressed?</p> <p>23 A. I wouldn't view it like that at all.</p> <p>24 Q. Now turning back to this document, a few more</p> <p>25 pieces I want you to look at. Adjustments to customer</p>
<p style="text-align: right;">Page 83</p> <p>1 Merle as well, Merle would fall asleep in board</p> <p>2 meetings. I mean, he was definitely asleep at the</p> <p>3 switch.</p> <p>4 And so I think Dick -- the combination is Dick</p> <p>5 was an -- the easiest target possible.</p> <p>6 Q. Do you think that Mr. Hylland had information</p> <p>7 with respect to the issues created by the EXPERT problem</p> <p>8 that others at NorthWestern -- that others -- let me</p> <p>9 strike that and try to articulate a decent question.</p> <p>10 One of the allegations against Mr. Hylland is</p> <p>11 that he knew about the EXPERT problems but didn't tell</p> <p>12 the board or other members of senior management. Based</p> <p>13 on what you know, is that a fair accusation?</p> <p>14 A. Define -- give me the scope of senior</p> <p>15 management.</p> <p>16 Q. Well, how would you define NorthWestern's</p> <p>17 senior management?</p> <p>18 A. Well, I'm not sure exactly who this is about,</p> <p>19 but it sounds like it's about Mike Hanson. So if senior</p> <p>20 management was strictly the corporate units but not</p> <p>21 necessarily somebody who was senior management of</p> <p>22 another operating unit, like Blue Dot and the other</p> <p>23 ones, the energy company, clearly everybody in senior</p> <p>24 leadership in a corporate administrative role knew about</p> <p>25 this. And I know that because I was present and</p>	<p style="text-align: right;">Page 85</p> <p>1 bills on page 6.</p> <p>2 A. Okay.</p> <p>3 Q. If you could just read paragraphs 21 through</p> <p>4 26.</p> <p>5 (Pause.)</p> <p>6 A. Can I take a health break and then we'll --</p> <p>7 (A discussion was had off the record.)</p> <p>8 (Noon recess taken from 12:14 p.m. to</p> <p>9 12:54 p.m.)</p> <p>10 MR. KAPLAN: Back on the record.</p> <p>11 Q. (BY MR. KAPLAN) I think we were up to</p> <p>12 paragraph -- we had done through paragraph 20 of the</p> <p>13 cease and desist order. We had talked about that. I</p> <p>14 think where we had broken was you had just read through</p> <p>15 paragraphs 21 through 26; is that correct?</p> <p>16 A. Correct.</p> <p>17 Q. I'm going to go through the same drill with</p> <p>18 these paragraphs. First, paragraph 21.</p> <p>19 A. That looks accurate.</p> <p>20 Q. Okay. And then paragraph 22?</p> <p>21 A. It looks accurate, except I can't vouch for</p> <p>22 the numbers after so long.</p> <p>23 Q. And paragraph 23?</p> <p>24 A. It looks accurate. And I guess I would add</p> <p>25 the context that if I recall correctly, June was the</p>

<p style="text-align: right;">Page 86</p> <p>1 first month of the unsuppressed opening balances. And    2 so we had internally forecasted that that would be a    3 kind of moving-the-pig-through-the-python situation; and    4 that we viewed once that was done, that it would    5 subside.</p> <p>6 Q. And just remind me, I know you used the term    7 earlier in the deposition but I don't remember exactly    8 the unsuppressed billing numbers.</p> <p>9 A. That is the situation where you'll get a bill    10 for the monthly charges but to the extent you have    11 previous months outstanding, that wasn't listed.</p> <p>12 Q. Okay.</p> <p>13 A. And so our view was that customers really    14 never had seen what we thought they owed us in total    15 until that moment. Of course, when they saw that, it    16 would be like getting your cable bill. You'd go, wait a    17 second. I didn't order HBO and On Demand or whatever.</p> <p>18 So we viewed that there would be one month of    19 that, because once you get your cable bill, you don't    20 call up three months later and say I didn't order HBO or    21 On Demand. You call up fairly timely.</p> <p>22 Q. Paragraph 24?</p> <p>23 A. Yeah. I think the numbers obviously are hazy    24 to the point of I have no clue. Order of magnitude    25 looks right. I don't know about this "due to a planned</p>	<p style="text-align: right;">Page 88</p> <p>1 public filings.</p> <p>2 Q. We'll get that. I agree. Taken in isolation,    3 it seems that way, but when we get there, that's their    4 allegation?</p> <p>5 A. Fair enough.</p> <p>6 Q. Paragraph 28, is that accurate?</p> <p>7 A. Sounds right, except, again, numbers are hazy    8 at this point. And I don't know that I ever knew what    9 percent they were of NorthWestern's reported income.</p> <p>10 Q. Okay. Same question for 29, again, I'm not    11 asking for you to vouch for the numbers and percentages.</p> <p>12 A. Okay. Same answer, then, looks appropriate.</p> <p>13 Q. Paragraph 30.</p> <p>14 A. I guess my assumption, then, is about the    15 numbers would have been that that wouldn't have tipped    16 the balance to the point of was able to report 8.7 of    17 operating income rather than substantial operating loss.    18 That sounds pretty dramatic.</p> <p>19 Q. But would you agree that it would have had to    20 report a loss? Take out "substantial," but would you    21 have -- do you know enough to be able to answer whether    22 it would otherwise have been a loss but for reduction in    23 reserves?</p> <p>24 A. Well, I mean, this really -- I don't. This    25 gets to the point of I don't see any pages saying why</p>
<p style="text-align: right;">Page 87</p> <p>1 correction," blah, blah, blah, would exceed estimates by    2 an additional 3.4 million. That doesn't ring a bell.</p> <p>3 Q. On paragraph 25?</p> <p>4 A. I'm assuming that's factually correct. The    5 numbers, again, I don't recall.</p> <p>6 Q. 26, since it's all numbers and percentages,    7 I'm not going to ask you to try and vouch for that.</p> <p>8 A. Sure. Thank you.</p> <p>9 Q. Then if we could go to the next category,    10 which are reserve reductions.</p> <p>11 A. Okay.</p> <p>12 Q. If you could read 27 through 31.</p> <p>13 A. Okay.</p> <p>14 Q. And let's go through them paragraph by    15 paragraph. 27, is that paragraph accurate?</p> <p>16 A. Accurate but not -- it's inaccurate by    17 omission, I would guess. What it's not saying is that    18 the external auditors went back and audited all the    19 reserve reductions and deemed that they were taken in    20 the appropriate periods.</p> <p>21 So I guess if I were writing this as a glass    22 half empty, half full, I think there -- whoever wrote    23 this is very remiss in doing it because it makes it    24 sound like they were inappropriately taken, when I think    25 their point is it should have been disclosed in the</p>	<p style="text-align: right;">Page 89</p> <p>1 did you put those reserves on the books the year before    2 because people bought and sold our stock based on that.    3 So, I mean, it's a classic SEC taking the more juicy    4 part of the argument rather than in balance.</p> <p>5 Q. Okay. And then paragraph 31?</p> <p>6 A. That's correct.</p> <p>7 Q. We're almost done.</p> <p>8 If you could look at the unusual transactions,    9 paragraph 32 through 36.</p> <p>10 A. Okay.</p> <p>11 Q. Is paragraph 32 accurate?</p> <p>12 A. I would say it's mischaracterized, these    13 noncompete-type payments. As I explained, I thought    14 they were more to make up for the difference -- they    15 weren't about competition, they were more to make up for    16 the difference in what assets Expanets was -- or    17 NorthWestern was buying from Avaya as opposed to a    18 noncompete.</p> <p>19 So I'm not sure -- that's what threw me when    20 you mentioned noncompete earlier. I just never heard or    21 dealt with it like this because there was certainly no,    22 You can't go solicit these customers, which is what I    23 would call noncompete.</p> <p>24 Q. Would you agree, though, that even if they    25 were not noncompete payments but they were -- I'm trying</p>

<p style="text-align: right;">Page 90</p> <p>1 to remember the term you used earlier.  2 A. Maintenance left behind.  3 Q. Maintenance left behind -- Would you agree  4 that maintenance left behind payments are not  5 characteristic of Expanets' regular operations and  6 therefore represented unusual transactions?  7 A. I would not agree with that characterization.  8 My point is that if the deal had gone through the way it  9 would have, those payments would have come through the  10 normal course of business, so it was a complete  11 balancing of what they would have gotten.  12 And I make that point by saying Avaya's not a  13 charitable organization. They wouldn't have written  14 those checks unless they felt like somehow those  15 payments should have been part of the deal.  16 Q. Paragraph 33, is that accurate?  17 A. I don't know about the exact numbers, and I  18 can disagree with the nomenclature.  19 Q. Paragraph 34, understanding that the numbers  20 you may not recall as well as the terminology of them as  21 noncompete payments, is it otherwise accurate?  22 A. I won't use my Lincoln quote anymore, but,  23 yeah. I mean, other than those two things, which is the  24 whole thing, it's accurate. It's got a period at the  25 end. It's capitalized properly. Sorry to be a wise</p>	<p style="text-align: right;">Page 92</p> <p>1 I'm going to go through with you, and that's the  2 intercompany advances to Expanets and Blue Dot. And  3 we'll only focus for each of these paragraphs on  4 Expanets. So if you could read 37 through 42.  5 A. 37 is correct. I'm not sure about the number,  6 but it sounds about right.  7 Q. Okay. 38?  8 A. The only thing that's wrong with 38 would be  9 that I started 15 days into the quarter, and we've got  10 that e-mail from me which I'm usually pretty accurate on  11 that said not only did we not borrow anything more, we  12 repaid 5 1/2 million. So that doesn't jibe with 50  13 million borrowed.  14 And if we're talking about 5 1/2 versus 5.6  15 million, I'd say whatever. But we're talking about a  16 whole different direction by tenfold.  17 Q. If you turn back to that MFIR, the management  18 financial --  19 A. Yeah. I think the difference between that, if  20 I remember correctly, is NorthWestern was asking  21 Expanets to pay for itself through cash flow. And so  22 there were \$25 million payments that were due for that.  23 I wouldn't characterize that as operating  24 expenses.  25 Q. Well, so when you look at the -- what have we</p>
<p style="text-align: right;">Page 91</p> <p>1 ass. I'm just getting tired.  2 Q. I understand. I hate to do this to you, but  3 paragraph 35, is it accurate? With the same caveats.  4 A. Ditto.  5 36?  6 Q. I'm sorry. I didn't know if you were joking  7 when you answered 35. Taking, with the caveats of the  8 characterization of noncompete payments, with your  9 disagreement with that characterization and --  10 A. Yeah. Yeah. If we change the -- I'm sorry.  11 Go ahead.  12 Q. With the caveat that you disagree with the  13 characterization of them as noncompete payments and your  14 inability to verify --  15 A. There's no numbers in this one.  16 Q. 35?  17 A. Oh. I'm sorry. 35. Yes.  18 Q. It's accurate with those caveats?  19 A. Correct.  20 Q. Okay. Then 36?  21 A. 36, other than characterizing them as  22 noncompete. I don't know for a fact that they didn't  23 disclose them, but assuming that that's true, then I  24 would agree with this.  25 Q. And then this is the last section of this that</p>	<p style="text-align: right;">Page 93</p> <p>1 marked this as? When you look at Exhibit 2, do you  2 think that the incremental borrowings there on page 9,  3 including the operating -- payment for operating  4 expenses?  5 A. Is this a cumulative chart?  6 Q. It looks to us --  7 A. It looks to me, also.  8 Q. You know this chart.  9 A. So this basically supports my stance, right?  10 Doesn't look like it went up 50 million to me. It looks  11 like it went down.  12 Q. I think you could look from March -- it looks  13 like from March to -- sometime March to April, it may  14 have been the period before you got there, there's a big  15 jump from -- is that 105 to 145 or somewhere in that  16 range? It's 150. That's how we've read this chart. If  17 you disagree --  18 A. Okay. I'm sorry. I was looking at April as  19 the beginning. Yeah. And I guess that would jive with  20 the fact that maybe it was all borrowed within the first  21 two weeks before I started.  22 Q. Okay.  23 A. I stand corrected then. I'm not sure about  24 the number, but do you folks have any further detail  25 that would indicate when in April it was borrowed?</p>

<p style="text-align: right;">Page 94</p> <p>1 Q. If we have any -- we're not trying to fool you 2 on it. To the extent we have anything to be more 3 specific --</p> <p>4 A. No. No. I'm trying to be accurate in my 5 answer because we saw this other thing where I said 6 since the new management team, which would be 7 April 15th, we have only done 5 1/2 million. So I would 8 suspect there was a large borrowing in the first 15 days 9 of the month.</p> <p>10 Q. Okay. Paragraph 39 is Blue Dot, so I'm not 11 going to ask you about that, as is paragraph 40.</p> <p>12 Paragraph 41, I'm going to ask you whether 13 that's accurate but only with respect to Expanets and 14 not with respect to Blue Dot.</p> <p>15 A. Okay. Now, this doesn't mention a time period 16 because, as I pointed out, we were accreted on cash from 17 April 15th on, so -- and the word "further" would 18 indicate they're not talking about the initial 19 investments. So do we know what the time bound of this 20 statement is?</p> <p>21 Q. Other than in the context which I can 22 interpret, you can interpret. So if you can't answer --</p> <p>23 A. So I can't -- I'd need to know a time period 24 to know whether it's true or not.</p> <p>25 Q. If we were talking in the first quarter of</p>	<p style="text-align: right;">Page 96</p> <p>1 September '02, so I'm confused. If they disclosed it in 2 the second quarter of '02, that would be, what, 3 August 15th filing? And so . . .</p> <p>4 Q. (BY MR. KAPLAN) I believe -- again, you can 5 interpret it, one, they disclosed the existence but they 6 didn't disclose the amounts. They said, Hey, we lent 7 some money but they didn't disclose the amounts until 8 later. In essence, you can't answer 42, whether it's 9 accurate?</p> <p>10 A. I guess if it was worth it, which it probably 11 isn't, we can pull out the balance sheet for that second 12 quarter and see how they're carrying intercompany 13 advances, which would talk about the amount, I would 14 think. It might not talk about to what subsidiary.</p> <p>15 (Deposition Exhibit 12 was marked.)</p> <p>16 Q. Do you recognize this document?</p> <p>17 A. I think I recognize it. I'm not sure that 18 I've ever seen it with the hand marking on it.</p> <p>19 Q. Aside from the hand marking, do you know --</p> <p>20 A. Yes.</p> <p>21 Q. What is this document?</p> <p>22 A. This looks like the disclosure subcommittee 23 findings. Now, is that an accurate date on there? 24 Because there's one of these where the date was 25 inaccurate because of the way Word redid the date when</p>
<p style="text-align: right;">Page 95</p> <p>1 2002, do you believe that it was --</p> <p>2 A. If we're talking about the first 3 three-and-a-half months of 2002 through April 15th, I 4 would say it's a true statement, but that would be the 5 initial investment because my understanding is they 6 didn't really start borrowing until January.</p> <p>7 So the word "further" seems to make it sound 8 beyond the initial. That's what's confusing me.</p> <p>9 Q. And then paragraph 42, again, without 10 commenting on the allegations with respect to Blue Dot, 11 is it accurate with respect to Expanets?</p> <p>12 A. Okay. I wasn't there in the first quarter, so 13 I don't know about that. Disclose in the second quarter 14 that made intercompany advances to Expanets, that sounds 15 like a good thing. Then the rest of it is about Blue 16 Dot.</p> <p>17 Q. Well, I think if you read the sentence, it did 18 not disclose intercompany events to Blue Dot or any 19 information about the significance of the intercompany 20 advances to either subsidiary.</p> <p>21 MR. ZISSER: I mean, it might be useful to 22 have some foundation of what "significance" was intended 23 to mean there.</p> <p>24 A. It says before that, NorthWestern disclosed in 25 the second quarter. Then it says did not disclose until</p>	<p style="text-align: right;">Page 97</p> <p>1 you pulled it up. It looks like the right one. Yeah, I 2 do recognize this.</p> <p>3 Q. And, I'm sorry, I don't know if you answered. 4 What is the document?</p> <p>5 A. It is the Expanets disclosure subcommittee 6 comments in -- help for preparing the 10-K.</p> <p>7 Q. And these are the initial comments that the 8 subcommittee provided that ultimately were -- led you 9 to -- this is the process that ultimately led you to 10 going to the chair of the audit committee?</p> <p>11 A. I don't know if it's the initial one, Gary. 12 I'm kind of hard pressed to say where they -- where it 13 is in the place. Let me look at it a little more 14 carefully, please.</p> <p>15 (Pause.)</p> <p>16 A. I guess -- I recognize it. I just don't know 17 where, in the pecking order of the things going back and 18 forth, whether it was the first shot, second, third.</p> <p>19 Q. Do you recall there being multiple memos to 20 the disclosure committee from the Expanets disclosure 21 subcommittee?</p> <p>22 A. Yes, I do.</p> <p>23 Q. Do you recall how many?</p> <p>24 A. I don't. I obviously could find out, but I 25 don't know how many.</p>

<p style="text-align: right;">Page 98</p> <p>1 Q. You don't recognize the handwriting on there?</p> <p>2 A. Kendall, confirm Deloitte and Touche, I would</p> <p>3 guess. Okay with current --</p> <p>4 Q. No. I'm not asking you to read it. I'm</p> <p>5 asking if you recognize it.</p> <p>6 A. No. I'm trying to get from the context of it</p> <p>7 whether -- let's put it this way. I don't think it's</p> <p>8 us. I don't think it's Expanets. I think it's</p> <p>9 NorthWestern. It looks like they've taken this and then</p> <p>10 gone through and said we agree. We don't agree. You</p> <p>11 know, whether Tom Knapp, his name is next to it, he</p> <p>12 needs to chase it down more. That kind of thing.</p> <p>13 Q. Do you remember seeing this with the -- with</p> <p>14 sort of the responses from NorthWestern in it?</p> <p>15 A. No. I remember not seeing it. I've never</p> <p>16 seen this with the notes on it. All the information</p> <p>17 went kind of one way.</p> <p>18 Q. I don't see any discussion in here with</p> <p>19 respect to the timing, you know, by which I'm saying,</p> <p>20 you know, when NorthWestern knew about the problem with</p> <p>21 EXPERT. Would that have been covered in a different one</p> <p>22 of these memoranda or is it in here and I'm missing it?</p> <p>23 A. No, it wouldn't have been in here. It would</p> <p>24 be versions -- can I -- what I'm talking about are</p> <p>25 literally Edgarized -- not Edgarized but things that</p>	<p style="text-align: right;">Page 100</p> <p>1 go to the fact that there was another document and</p> <p>2 perhaps other drafts floating around but just not laying</p> <p>3 it out or do you think there's something else?</p> <p>4 A. The thing with the piecemeal fashion and --</p> <p>5 Q. Piecemeal and informational language</p> <p>6 requesting permitted.</p> <p>7 A. You know, I'd have to read the whole thing for</p> <p>8 content. Again, I think the thing that is challenging</p> <p>9 -- and even reading for content is going to be a</p> <p>10 challenge in recalling this, is, is this before or after</p> <p>11 the document that we got that we said it didn't happen</p> <p>12 at all like this?</p> <p>13 Because we were somewhat uncomfortable in</p> <p>14 addressing this in a piecemeal fashion was that they</p> <p>15 would send, How about this? How about that? Rather</p> <p>16 than just getting a complete document that we could</p> <p>17 react to. They sent it down one chunk at a time, which,</p> <p>18 No. 1, didn't give you the context of how it fit into</p> <p>19 the entire story.</p> <p>20 So that would lead me to believe right now</p> <p>21 that this preceded the version where -- that we got</p> <p>22 where we said we think there is misrepresenting the</p> <p>23 timeline.</p> <p>24 Q. Okay. And I apologize if I'm being repetitive</p> <p>25 but I'm trying to see if there is a document, that we</p>
<p style="text-align: right;">Page 99</p> <p>1 have gone through Donnelly, versions of their queue that</p> <p>2 were near final that they had the fraudulent statements</p> <p>3 that had been highlighted and then subsequently</p> <p>4 corrected.</p> <p>5 Q. So your recollection is you wouldn't</p> <p>6 necessarily have a memorandum like this; instead, you</p> <p>7 would have just a markup of a 10-K?</p> <p>8 A. Right.</p> <p>9 Q. Would that have been sent by the Expanets</p> <p>10 disclosure committee to the disclosure committee? Was</p> <p>11 there one person who was responsible for marking it up?</p> <p>12 A. As I recall, it was something -- what I can</p> <p>13 tell you is we did receive them, so we've gotten them</p> <p>14 and retained them and then probably sent a voicemail</p> <p>15 back like, What are you guys smoking? I mean, it was so</p> <p>16 ludicrous, I'm not sure -- well, some of these things</p> <p>17 are, well, we'll use this word rather than that word</p> <p>18 kind of thing. This is just a, We don't even know where</p> <p>19 to start --</p> <p>20 Q. Okay.</p> <p>21 A. -- kind of thing. So it would almost not lend</p> <p>22 itself to being marked up and red-lined and sent back</p> <p>23 because we were so taken back.</p> <p>24 Q. Is the first bullet -- and I'm trying to just</p> <p>25 interpret the document -- is the first bullet trying to</p>	<p style="text-align: right;">Page 101</p> <p>1 make sure we have it.</p> <p>2 A. Sure.</p> <p>3 Q. Do you recall any document, be it memorandum</p> <p>4 or written markup or any document in which you would</p> <p>5 have given your -- you or anybody in Expanets'</p> <p>6 disclosure subcommittee would have given comments to</p> <p>7 NorthWestern on the draft of the 10-K?</p> <p>8 A. I mean, I know I possess it, but I don't know</p> <p>9 that anybody else kept it. I was the most rigorous</p> <p>10 record keeper of my peers. And the people at</p> <p>11 NorthWestern sure wouldn't want to keep it.</p> <p>12 Q. If you look at the last two pages of the</p> <p>13 document.</p> <p>14 A. Um-hum.</p> <p>15 Q. Do you recognize the document?</p> <p>16 A. I do.</p> <p>17 Q. What is it?</p> <p>18 A. I alluded to this document earlier when I said</p> <p>19 that the reserve reversals were appropriate -- in</p> <p>20 hindsight were deemed appropriate. This is the document</p> <p>21 that I was alluding to.</p> <p>22 Q. Okay.</p> <p>23 MR. AUERBACH: Just so we're clear for the</p> <p>24 record, it's NOR 365796 and -797?</p> <p>25 MR. KAPLAN: And -797.</p>

10

Maglen Asset Management Corporation, et al. vs. NorthWestern Corporation, et al.

04/12/07

KIPP ORME

1	IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE	1	3
2		2	
3	MAGLEN ASSET MANAGEMENT ) CORPORATION and LAW DEBENTURE ) 4 TRUST COMPANY OF NEW YORK, ) 5 Plaintiffs, ) 6 vs. ) 7 NORTHWESTERN CORPORATION, ) 8 Defendant. ) 9	3	For the Plaintiff Maglen Asset Management Corporation: 4 BONNIE STEINGART 5 Attorney at Law 6 Fried, Frank, Harris, Shriver & 7 Jacobson, LLP 8 One New York Plaza 9 New York, New York 10004 10 (212) 859-8000 11 (212) 859-0585 (fax) 12 bonnie.steingart@friedfrank.com
10		10	For the Plaintiff Law Debenture Trust Company of New York: 11
11	MAGLEN ASSET MANAGEMENT ) 12 CORPORATION, ) 13 Plaintiff, ) 14 vs. ) 15 MICHAEL J. HANSON and ) 16 ERNIE J. KINDT, ) 17 Defendants. ) 18	12	JOHN V. SNELLINGS 13 Attorney at Law 14 Nixon Peabody, LLP 15 100 Summer Street 16 Boston, Massachusetts 02110 17 (617) 345-1000 18 (866) 947-1732 (fax) 19 janellings@nixonpeabody.com
19	DEPOSITION OF 20 KIPP ORME 21 April 12, 2007 22	18	For the Defendant NorthWestern Corporation: 19 NANCY DELANEY (by telephone for a portion) 20 JOSEPH D. PIZZURRO (for a portion) 21 Attorneys at Law 22 Curtis, Mallet-Prevost, Colt & Mosle, LLP 23 101 Park Avenue 24 New York, New York 10178 25 (212) 696-6000 26 (212) 697-1559 (fax) 27 jpizzurro@cm-p.com
23	LYON REPORTING, INC. Certified Court Reporters P.O. Box 81124 Atlanta, Georgia 30366 770/458-5500 800/767-2030	2	
24		1	4
25		1	APP E A R A N C E S (continued)
1	Deposition of KIPP ORME, taken on behalf of 2 the Plaintiff, Maglen Asset Management Corporation, at 3 Lyon Reporting, Inc., 5873 New Peachtree Road, Suite 4 50, Atlanta, Georgia, on April 12, 2007, at 1:01 p.m., 5 before Donna F. Moilere, Certified Court Reporter and 6 Notary Public within Georgia. 7 8 9 10 11 12 13 * * * 14 15 16 17 18 19 20 21 22 23 24 25	3	For the Defendants Michael J. Hanson and Ernie J. Kindt: 4 5 STANLEY T. KALECZYC (by telephone) 6 KIM BEATTY 7 Attorneys at Law 8 Browning, Kaleczyc, Berry & Hoven, P.C. 9 139 North Last Chance Gulch 10 Helena, Montana 59601 11 (406) 443-6820 12 (406) 443-6833 (fax) 13 stan@bkbh.com 14 15 For the Deponent: 16 MELISSA K. ORME 17 Attorney at Law 18 NK Orme & Associates, LLC 19 34 Muirfield Court 20 Newnan, Georgia 30265 21 (678) 471-2785 22 (770) 254-0308 (fax) 23 melissaorme@nkorme.com 24 25

1 (Pages 1 to 4)

KIPP ORME

<p>1 MS. ORME: Fifth.</p> <p>2 Q. (By Ms. Steingart) And the negative</p> <p>3 overall results during December were, in large part,</p> <p>4 due to the Expert system problems; right?</p> <p>5 MS. ORME: Fifth.</p> <p>6 Q. (By Ms. Steingart) Indeed, throughout</p> <p>7 2002 Expanets continued to need infusions of cash from</p> <p>8 NorthWestern to stay in business; isn't that right?</p> <p>9 MS. ORME: Fifth.</p> <p>10 Q. (By Ms. Steingart) In light of the</p> <p>11 problems with the Expert transition, NorthWestern</p> <p>12 began to advance cash to Expanets; isn't that right?</p> <p>13 MS. ORME: Fifth.</p> <p>14 Q. (By Ms. Steingart) And, indeed,</p> <p>15 Expanets needed a lot of cash, didn't it?</p> <p>16 MS. ORME: Fifth.</p> <p>17 Q. (By Ms. Steingart) Between December</p> <p>18 2001 and April 2002, NorthWestern advanced \$150</p> <p>19 million to Expanets; right?</p> <p>20 MS. ORME: Fifth.</p> <p>21 Q. (By Ms. Steingart) As CFO of</p> <p>22 NorthWestern and also because you remained in regular</p> <p>23 contact with Expanets' senior people, you were aware</p> <p>24 of the advances NorthWestern was making to Expanets as</p> <p>25 they were happening; correct?</p>	<p>21</p> <p>1 MS. ORME: Fifth.</p> <p>2 Q. (By Ms. Steingart) Now, it's true that</p> <p>3 after issuance of the second quarter 10-Q for 2002 but</p> <p>4 before the issuance of the third quarter 10-Q,</p> <p>5 NorthWestern did a public equity offering?</p> <p>6 MS. ORME: Fifth.</p> <p>7 Q. (By Ms. Steingart) And if we look at</p> <p>8 the third quarter 10-Q, in the third quarter 10-Q</p> <p>9 there is a disclosure of intercompany advances</p> <p>10 totalling \$191 million; right?</p> <p>11 MS. ORME: Fifth.</p> <p>12 Q. (By Ms. Steingart) Yet most of that</p> <p>13 over \$150 million of that was advanced prior to the</p> <p>14 filing of the 10-Q for the second quarter; right?</p> <p>15 MS. ORME: Fifth.</p> <p>16 Q. (By Ms. Steingart) And that wasn't</p> <p>17 disclosed in the second quarter 10-Q because</p> <p>18 NorthWestern did not want the market aware that --</p> <p>19 during the public equity offering; correct?</p> <p>20 MS. ORME: Fifth.</p> <p>21 Q. (By Ms. Steingart) Ultimately,</p> <p>22 Expanets had massive losses for 2002; correct?</p> <p>23 MS. ORME: Fifth.</p> <p>24 Q. (By Ms. Steingart) And these massive</p> <p>25 losses for 2002 caused the restatement in an aggregate</p>
<p>22</p> <p>1 MS. ORME: Fifth.</p> <p>2 Q. (By Ms. Steingart) To determine how</p> <p>3 much cash Expanets would get with each of these</p> <p>4 advances, you and Richard Hilland would discuss</p> <p>5 Expanets' cash requirements; correct?</p> <p>6 MS. ORME: Fifth.</p> <p>7 Q. (By Ms. Steingart) And NorthWestern</p> <p>8 was aware even by the end of December of 2001 that the</p> <p>9 Expert transition issues would require \$70 million</p> <p>10 more in working capital during the first 60 to 90 days</p> <p>11 of 2002 than previously anticipated; correct?</p> <p>12 MS. ORME: Fifth.</p> <p>13 Q. (By Ms. Steingart) This also was</p> <p>14 reflected in the MFIR for December 2001, wasn't it?</p> <p>15 MS. ORME: Fifth.</p> <p>16 Q. (By Ms. Steingart) Now, turning back</p> <p>17 to 10-Q for the first quarter of 2002, NorthWestern</p> <p>18 did not disclose in this report that it had advanced a</p> <p>19 substantial amount of money to Expanets during 2002,</p> <p>20 did it?</p> <p>21 MS. ORME: Fifth.</p> <p>22 Q. (By Ms. Steingart) By the date of the</p> <p>23 first quarter 2002, you were aware that NorthWestern</p> <p>24 has advanced over \$145 million to Expanets, but this</p> <p>25 was not included in the 10-Q, was it?</p>	<p>22</p> <p>1 amount to be \$900 million, didn't it?</p> <p>2 MS. ORME: Fifth.</p> <p>3 Q. (By Ms. Steingart) And NorthWestern's</p> <p>4 consolidated figures that were initially misstated</p> <p>5 included inaccurate results for Expanets for each of</p> <p>6 the quarters of 2002?</p> <p>7 MS. ORME: Fifth.</p> <p>8 Q. (By Ms. Steingart) In the 2002 10-K,</p> <p>9 there was a disclosure that NorthWestern's nonenergy</p> <p>10 businesses had experienced disappointing results for a</p> <p>11 period of three years; correct?</p> <p>12 MS. ORME: Fifth.</p> <p>13 Q. (By Ms. Steingart) And that is</p> <p>14 essentially for the duration of those investments;</p> <p>15 right?</p> <p>16 MS. ORME: Fifth.</p> <p>17 Q. (By Ms. Steingart) Indeed, the 10-Q</p> <p>18 says that, quote, our experience with our nonenergy</p> <p>19 businesses has been very disappointing. They have</p> <p>20 adversely impacted our overall results of operations,</p> <p>21 financial condition, and liquidity for three years;</p> <p>22 right?</p> <p>23 MS. ORME: Fifth.</p> <p>24 Q. (By Ms. Steingart) Indeed, all of</p> <p>25 these operations in each of those three years were a</p>

Maglen Asset Management Corporation, et al. vs. NorthWestern Corporation, et al.  
KIPP ORME

04/12/07

<p>25        1 substantial drain on NorthWestern's liquidity; 2 correct? 3            MS. ORME: Fifth. 4        Q. (By Ms. Steingart) And NorthWestern 5 knew during every quarter in 2002 that the nonenergy 6 subsidiaries were complete failures, didn't it? 7            A. Fifth. 8        Q. Indeed, it wasn't just suddenly at the 9 end of 2002 that the substantial failure of these 10 businesses was known to NorthWestern; correct? 11            MS. ORME: Fifth. 12        Q. (By Ms. Steingart) Expanets' failure 13 was attributed to, among other things, the 14 deterioration of business in telecommunications 15 markets; correct? 16            MS. ORME: Fifth. 17        Q. (By Ms. Steingart) But this was 18 something that persisted all during the period of 19 NorthWestern's ownership of that; correct? 20            MS. ORME: Fifth. 21        Q. (By Ms. Steingart) Indeed, the amount 22 that NorthWestern carried on its financial statements 23 for good will in Expanets were incorrect all during 24 2002; isn't that right? 25            MS. ORME: Fifth.</p>	<p>25        1 quarter of 2002, Blue Dot had a negative operating 2 income of \$3.7 million, which was \$1.2 million below 3 plan; correct? 4            MS. ORME: Fifth. 5        Q. (By Ms. Steingart) And by May 2002, 6 Blue Dot wasn't just underperforming; it was harming 7 the perceived value of NorthWestern in the eyes of 8 financial analysts; isn't that right? 9            MS. ORME: Fifth. 10       Q. (By Ms. Steingart) The analysts did 11 not understand how Blue Dot fit into company strategy 12 and saw it as a dead weight; right? 13            MS. ORME: Fifth. 14       Q. (By Ms. Steingart) All during 2002, 15 you were aware that Blue Dot actually had zero value; 16 isn't that right? 17            MS. ORME: Fifth. 18       Q. (By Ms. Steingart) And you knew that 19 Blue Dot had no value before NorthWestern released the 20 10-Q before the second quarter of 2002; right? 21            MS. ORME: Fifth. 22       Q. (By Ms. Steingart) Yet even though 23 Blue Dot had no value for the second quarter of 2002, 24 the company allocated losses of over \$8 million to 25 Blue Dot common stock; isn't that right?</p>
<p>26        1        Q. (By Ms. Steingart) And the good will 2 associated with Expanets, you know, should have been 3 completely brought to zero prior to the end of 2002; 4 isn't that right? 5            MS. ORME: Fifth. 6        Q. (By Ms. Steingart) Blue Dot was 7 another underperforming business at NorthWestern, 8 wasn't it? 9            MS. ORME: Fifth. 10       Q. (By Ms. Steingart) Prior to 11 September -- strike that. In September of 2001, Blue 12 Dot's performance was well below the original plan, 13 wasn't it? 14            MS. ORME: Fifth. 15        Q. (By Ms. Steingart) In that month, the 16 revenues were \$33 million, and more than \$10 million 17 below the planned number; correct? 18            MS. ORME: Fifth. 19        Q. (By Ms. Steingart) And the net income 20 was a negative \$670,000; correct? 21            MS. ORME: Fifth. 22        Q. (By Ms. Steingart) Blue Dot's 23 performance did not improve in 2002; right? 24            MS. ORME: Fifth. 25        Q. (By Ms. Steingart) During the first</p>	<p>26        1        MS. ORME: Fifth. 2        Q. (By Ms. Steingart) This resulted in a 3 material misstatement in NorthWestern's public filing, 4 didn't it? 5            MS. ORME: Fifth. 6        Q. (By Ms. Steingart) I'd like to turn 7 your attention to the Montana Power acquisition and 8 subsequent going-flat transaction. On November 15, 9 2002, you were aware that NorthWestern was 10 transferring substantially all of the assets of 11 Montana Power, which had been renamed NorthWestern 12 Energy, LLC, to itself; correct? 13            MS. ORME: Fifth. 14       Q. (By Ms. Steingart) And you were also 15 aware that the assets transferred to NorthWestern by 16 Montana Power were worth in excess of \$1 billion and 17 between \$1 billion and \$1.4 billion; correct? 18            MS. ORME: Fifth. 19       Q. (By Ms. Steingart) Yet Montana Power, 20 which was renamed, as we said before, NorthWestern 21 Energy, received no cash for that transfer, did it? 22            MS. ORME: Fifth. 23       Q. (By Ms. Steingart) The only 24 consideration that NorthWestern Energy, LLC, received 25 from NorthWestern in connection with the transfer was</p>

7 (Pages 25 to 28)

## KIPP ORME

29	
1 the assumption by NorthWestern of approximately 700 in 2 liabilities, including liability to the Quips; 3 correct?	31
4 MS. ORME: Fifth.	1 MS. STEINGART: Well, you can stay on. 2 MS. DELANEY: Thank you all.
5 Q. (By Ms. Steingart) So the assets 6 transferred far -- the value of the assets transferred 7 far exceeded the value of the liabilities assumed in 8 connection with the going-flat transaction; isn't that 9 right?	3 MS. STEINGART: You're welcome. 4 (Ms. Delaney hangs up, leaving the 5 deposition.)
10 MS. ORME: Fifth.	6 Q. (By Ms. Steingart) Now, at the time 7 that NorthWestern assumed the liability of the Quips 8 in connection with the going-flat transaction, you 9 knew that NorthWestern did not have the financial 10 ability to pay those liabilities; correct?
11 Q. (By Ms. Steingart) There was one asset 12 that was left at NorthWestern Energy, LLC, wasn't 13 there?	11 MS. ORME: Fifth.
14 MS. ORME: Fifth.	12 Q. (By Ms. Steingart) And had 13 NorthWestern's true financial condition in November of 14 2002 been known, the going-flat transaction would not 15 have been able to go forward; isn't that right?
15 Q. (By Ms. Steingart) And that asset was 16 the Milltown Dam. Do you recall?	16 MS. ORME: Fifth.
17 MS. ORME: Fifth.	17 Q. (By Ms. Steingart) Indeed, 18 NorthWestern fraudulently concealed its true financial 19 condition in order to be able to effectuate the 20 going-flat transaction, didn't it?
18 Q. (By Ms. Steingart) The Milltown Dam 19 had various environmental liabilities and operating 20 costs but generated no revenue; isn't that right?	21 MS. ORME: Fifth.
21 MS. ORME: Fifth.	22 Q. (By Ms. Steingart) NorthWestern 23 fraudulently concealed its true financial condition in 24 the first 10-Q for 2002, didn't it?
22 Q. (By Ms. Steingart) As a result of the 23 transfer of assets to NorthWestern and the retention 24 of the Milltown Dam by NorthWestern Energy, LLC, 25 NorthWestern Energy, LLC, was rendered insolvent,	25 MS. ORME: Fifth.
30	
1 wasn't it?	32
2 MS. ORME: Fifth.	1 Q. (By Ms. Steingart) NorthWestern 2 fraudulently concealed its true financial condition in 3 its second quarter 10-Q filed with the SEC; correct?
3 Q. (By Ms. Steingart) NorthWestern Energy 4 did not generate sufficient cash to meet the ongoing 5 expenses of the Milltown Dam after the going-flat 6 transaction, did it?	4 MS. ORME: Fifth.
7 MS. ORME: Fifth.	5 Q. (By Ms. Steingart) If NorthWestern's 6 true financial condition had been known during the 7 first and second quarter of 2002, the credit agencies 8 would have downgraded NorthWestern's stat, wouldn't 9 they?
8 Q. (By Ms. Steingart) And NorthWestern 9 Energy, LLC, did not generate sufficient cash after 10 the going-flat transaction to pay on its joint and 11 several liability on the Quips, did it?	10 MS. ORME: Fifth.
12 A. Fifth.	11 Q. (By Ms. Steingart) There would have 12 been no equity offering by NorthWestern during that 13 period; isn't that right?
13 Q. Now, at the time that NorthWestern -- 14 (Mr. Steingart enters the deposition.)	14 MS. ORME: Fifth.
15 MS. STEINGART: We'll stop for a 16 minute. Joe is entering the room.	15 Q. (By Ms. Steingart) If NorthWestern had 16 made the \$900 million aggregate adjustment to its 17 first three 10-Qs that were required -- that it was 18 required to make later on, the going-flat transaction 19 would never have occurred; isn't that right?
17 (A discussion was held off the record.)	20 MS. ORME: Fifth.
18 MS. STEINGART: Nancy, Joe has arrived.	21 Q. (By Ms. Steingart) Now, I'd like to 22 ask you a few questions about your compensation as CFO 23 of NorthWestern. In connection with your employment 24 as CFO of NorthWestern, you had an employment 25 agreement, which was filed as part of an 8-K in
19 Nancy?	
20 MR. PIZURRO: Hello?	
21 MS. DELANEY: Yes, I'm here.	
22 MS. STEINGART: We just wanted you to 23 know that.	
24 MS. DELANEY: I'm going to hang up 25 then.	

## KIPP ORME

	33	1     December of 2001; correct? 2            MS. ORME: Fifth. 3     Q. (By Ms. Steingart) And your 4   compensation included a base salary of \$230,000 a 5   year; correct? 6            MS. ORME: Fifth. 7     Q. (By Ms. Steingart) And your 8   compensation included a short-term performance bonus 9   that amounted to 81.3 percent of your annual base 10   salary; correct? 11           MS. ORME: Fifth. 12     Q. (By Ms. Steingart) And that was 13   payable only if NorthWestern achieved specific target 14   performance; correct? 15           MS. ORME: Fifth. 16     Q. (By Ms. Steingart) And your 17   compensation also included a long-term equity plan, 18   which would involve a -- Strike that. 19           And your compensation also included a 20   long-term equity plan, which included a grant of 21   29,000 shares worth around \$200,000; correct? 22           MS. ORME: Fifth. 23     Q. (By Ms. Steingart) And it included a 24   long-term incentive performance plan that would have 25   been 28.3 percent of your annual base salary; correct?	35
	34	1           MS. ORME: Fifth. 2     Q. (By Ms. Steingart) But, again, you 3   would only earn those compensations if NorthWestern 4   achieved a specific target performance; correct? 5           MS. ORME: Fifth. 6     Q. (By Ms. Steingart) You, therefore, 7   were in a position to receive substantial compensation 8   in addition to your base salary if NorthWestern and 9   its subsidiaries achieved various performance 10   benchmarks; correct? 11           MS. ORME: Fifth. 12     Q. (By Ms. Steingart) Now, it's true, 13   isn't it, that NorthWestern filed quarterly and 14   current reports with the Securities and Exchange 15   Commission during the first three quarters of 2002 16   that materially misstated NorthWestern's financial 17   position? 18           MS. ORME: Fifth. 19     Q. (By Ms. Steingart) It's also true that 20   during the first three quarters of 2002 NorthWestern 21   filed quarterly reports with the Securities and 22   Exchange Commission that misrepresented or did not 23   disclose required information about its nonutility 24   businesses, Expanets and Blue Dot; correct? 25           MS. ORME: Fifth.	36
	35	1     Q. (By Ms. Steingart) NorthWestern 2   overstated its income from continuing operations 3   during the first quarter of 2002 by approximately 176 4   percent; correct? 5           MS. ORME: Fifth. 6     Q. (By Ms. Steingart) NorthWestern 7   overstated its income from continuing operations 8   during the second quarter of 2002 by 618 percent; 9   correct? 10           MS. ORME: Fifth. 11     Q. (By Ms. Steingart) And NorthWestern 12   restated its income from operations for the third 13   quarter of 2002 by 109 percent; right? 14           MS. ORME: Fifth. 15     Q. (By Ms. Steingart) The misstatements 16   during this period were caused by the company's 17   improper accounting for accounts receivable, 18   adjustments to companies' bills, and allocations of 19   losses to minority interests; correct? 20           MS. ORME: Fifth. 21     Q. (By Ms. Steingart) NorthWestern also 22   misrepresented or did not disclose the effects of 23   significant problems with Expanets' new business 24   technology information system; right? 25           MS. ORME: Fifth.	36

**EXHIBITS 11 - 14**

**REDACTED IN THEIR ENTIRETY**